EVERY LANDLORD or TENANT HIS OWN LAWYER;

OR, THE

WHOLE LAW RESPECTING Landlords, Tenants, and Lodgers;

LAID DOWN IN A SIMPLE, EASY, AND COMPREHENSIVE MANNER;

FREE FROM THE TECHNICAL TERMS OF THE LAW.

CONTAINING

The most approved FORMS of NOTICES to quit PREMISES: Directions for making and compleating a DISTRESS, and for REPLEVYING GOODS when illegally taken:

ALSO

MEMORANDUMS for letting HOUSES, LANDS, or APARTMENTS by Agreement, or on Lease; and various PRECEDENTS of LEASES, and other Useful DEEDS, as settled by the most eminent COUNCIL.

TOGETHER

With an ABSTRACT of an Act of the 15th GEORGE III. for regulating BUILDINGS and PARTY-WALLS in LONDON, and its Environs.

The THIRD EDITION.

With considerable Additions and Improvements, particularly as to Registering Deeds, and the Law and Practice of Replevin and Ejectment.

By JOHN PAUL, BARRISTER at Law.

Author of the CONSTABLE, CHURCHWARDEN, OVERSEER, and SURVEYOR of the HIGHWAYS GUIDE, and other Law Tracts.

REVISED AND CORRECTED

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LANDLORD or TENANT

HIS OWN

LAWYER.

Of TENURES or ESTATES.

The different Kinds of Tenures now in Use, are,

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Tenant *in-tail*, after possibility of issue extinct.

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Tenants in *coparcenary*, *joint-tenants*, and *tenants in common*.

FEE-SIMPLE, is an estate whereby a person is seised of lands or tenements *To hold to him and his heirs for ever*, it is the most perfect tenure of any, when unincumbered with judgments, statutes merchant, and of the staple, recognizances, mortgages, wills, precontracts, bargains and sales, feoffments, fines, amerciaments, jointures, dowers, or fraudulent conveyances. It is an estate that may be forfeited for *treason or felony* without benefit of clergy. See *Co. Lit. ch.* 1. *Of Fee-simple*.

All freeholds, before the ſtatute of *Weſtminſter de donis*, made 13 *Edw.* 1. were *fee-ſimple* at common law; ſo that *a tenant in tail* was inſtituted by means of that ſtatute, of which there are two kinds, *general*, and *ſpecial tail*.

The party is ſaid to be tenant in *general tail*, who holds lands or tenements to him or her, and to the heirs of his or her body, lawfully begotten; but where lands or tenements are ſettled on a man and his wife, and the heirs of their bodies between them two, lawfully to be begotten, this is a tenancy in *ſpecial tail*; this tenure in *ſpecial tail* may be varied to the heirs male or female according to the will of the donor, in whom the *fee-ſimple* is veſted.

An eſtate *in tail* may be barred by a common recovery; and if the tenant *in tail general*, or *ſpecial*, die without iſſue, the fee-ſimple reverts to the donor, or his lawful heirs.

When an eſtate is granted to a man and his wife in *ſpecial tail*, and one of them dies before they have iſſue, the ſurvivor is *tenant in tail after poſſibility of iſſue extinct*; or if they have iſſue, and ſuch iſſue dying without iſſue, this tenancy remains in the ſurviving donee. The ſeveral rights of this tenure may be ſeen in *Co. Lit. ch.* 2. *Of Fee-tail.*

If a man marries a woman ſeiſed of lands or tenements in *fee-ſimple*, or *general fee-tail*, or if his wife is heireſs thereto in *ſpecial tail*, and he has a child by her, male, or female, born alive; if ſhe dies firſt, whether the child be living or not, yet he ſhall, during his life, hold the ſaid lands or tenements during his life as tenant by the *courteſy of England*. If the child or children die as ſoon as born, if they were heard to cry, or if he can bring ſufficient teſtimony that they or one of them was born alive, he ſhall hold the lands during his life by this *courteſy*. *Note:* This tenure is peculiar to this country only, and according to *Lit.* has its denomination from being ſo peculiar, tho' it appears to have been the eſtabliſhed law of *Scotland*, where it was called *Curialitas*. *See Crag. l.* 2. *ch.* 19. *ſect.* 4.

A woman who marries a man ſeiſed of lands or tenements in *fee-ſimple*, or in *general tail*, or if he is heir in *ſpecial tail*, the wife after his death, whether he leaves iſſue by her or not, ſhall have her *thirds* of ſuch lands as were her huſband's at any time during coverture as *tenant in dower*, if ſhe be above *nine years* of age at her huſband's death. *Cuſtom* varies this tenure; in ſome places

places she is entitled to *half* the produce of the estate; in others the *whole*, which she claims as *tenant in dower* to her husband's estate.

The custom in *Kent* is, that the wife shall have half the produce of the husband's lands while she remains a widow, and without child; but as soon as she marries again, she looses all. If a man marries a woman having lands, *&c.* he has the same privilege while he remains a widower, but no longer. This tenancy by the curtesy requires four things, *viz.* marriage, seizin of the wife, issue, and death of the wife. *Co. Lit.* 30.

A person holding lands or tenements for his own life, or for the term of another's life, he, as lessee of the said lands or tenements, is *tenant for life* therein, and the freehold vests in him. *Note:* This in law is considered as the lowest kind of freehold.

A *tenant for life* is punishable for waste, and may commit a forfeiture; and by *stat.* 4th and 5th *Anne*, all warranties made by him of any lands, *&c.* the same descending to any person in reversion or remainder, are void.

A man demising lands, tenements, *&c.* to another for a limited number of years, the lessee in law is considered as a *tenant for years* on his entering on the said premises by virtue of such lease. This tenancy may be created by word of mouth, and is called in law a *parol lease*, and binds the lessor so long as the same was agreed for, if the witnesses are living to prove the same; but see the *Stat.* 29. *Car.* 2. *ch.* 3. *sect.* 1, 2.

A man demising lands to another *To hold* to him at the will of the lessor; by this demise the lessee becomes possessed of such lands, *&c.* and is *tenant at will* thereof. This tenancy is no longer durable than while the lessor pleases, who can dispossess him of his tenure by suit in *ejectment*. The lessor in this case cannot oblige the lessee to continue in the lands against his will. If he dislikes, he may give him legal notice, and quit the same. Indeed the holding here is reciprocal, and determinable at the will of either party.

At a meeting of eleven of the judges (among whom were Lord *Mansfield* and Lord Chief Justice *De Grey*) and a conference there had (on the motion of Mr. Justice *Gould*) what notice was necessary to be given to a lessee at will to quit possession, before a lessor at will could have title to bring an ejectment and recover possession; it was their unanimous opinion, that in all cases of leases at will of farms of lands to hold from year to year, and so for as

long time as both parties ſhall pleaſe, that before the landlord can have title to bring an ejectment againſt the tenant at will, he muſt give the tenant half an year's notice to quit poſſeſſion of the farm. And they held the like law as to houſes lett at will, unleſs there be ſome uſage or cuſtom (of the place or diſtrict where the houſe is ſituate) to give a ſhorter or other kind of notice to quit.

If a man holds lands of another by leaſe, for a term of years, and keeps poſſeſſion thereof after the ſaid term is expired, ſuch perſon in law is called *a tenant at ſufferance*; this tenancy is begot by the *laches* of his leſſor.

Perſons having lands and tenements *To hold* to them and their heirs in *fee-ſimple*, *fee-tail*, or for the *term of their lives*, or on any other condition at the will of a ſuperior lord, after the cuſtom of his manor, ſuch perſons are called copyholders, or *tenants by copy of court-roll*, a copy of ſuch court-roll or entry into the court books of the ſaid manor (of which the tenant has a tranſcript ſigned by the ſteward) being all the evidence or title they have to ſhew for their right to the ſaid lands, *&c.*

Copyhold tenures are derived from the ancient tenure of *pure villenage*, and vary in different parts of *England*, according to the cuſtom of the reſpective manors to which they belong; and it is held, that a tenant of a copyhold eſtate is as well inheritable therein as one that has a *fee-ſimple*, provided he complies with the cuſtom of the manor, and performs and pays his ſervices due and of right belonging to the lord thereof.

Tenants in *co-parcenary* are of two kinds, *viz. parceners* at *common law*, and by *cuſtom*. By the courſe of the common law, when a party, either male or female, is ſeiſed of an eſtate in *fee-ſimple* or *fee-tail*, and dies, leaving iſſue only daughters, the eſtate deſcends to them all equally as co-heirs; or if a man ſeiſed of lands dies without iſſue, the eſtate deſcends to his ſiſters as co-heireſſes; or if he has no ſiſters, and it deſcends to his aunts, they are alſo co-heireſſes, or *tenants in co-parcenary*.

Concerning partition of land in *co-parcenary*, *joint-tenancy*, and *tenancy in common*, ſee *ſtat.* 8th and 9th *W.* 3. and *ſtat.* 7th *Ann.*

In *Kent*, and ſome few other places in *England*, and in *North Wales*, if a man is ſeiſed in *fee-ſimple*, or *fee-tail*, of an eſtate held by the tenure of *gavel-kind*, and has iſſue,

the sons after his death shall be all co-heirs, and equally inherit those lands, *&c.* and are called *parceners by custom.*

Where there are several co-parceners, and one dies, leaving issue before partition made, the share or interest of the deceased descends to her issue; and if one dies, without issue, the share descends equally to the co-heirs.

When a man seised of an estate in *fee* does enfeoff several persons *To hold* to them and their heirs, or *To hold* to them for the term of their natural lives, or for the life of another, and they become seised by virtue thereof; or if several persons disseise another of an estate to their joint use, such are termed *joint tenants.*

The nature of this tenure is, that the whole estate passes to the survivor in whom it vests in *fee-simple* to him and his heirs. This survivorship takes place among all persons who have joint-estates or possession with others in chattels real, or personal, as lessees, *&c.*

Where there are several joint-tenants for life, and one grants a term out of his moiety for a certain annual rent, but dies before such term is expired, it holds against the survivor; but the rent ceases. Among co-heirs or co-parceners the rent does not cease.

Statutes 31 *H.* 8. 32 *Hen.* 8. and 8th and 9th *W.* 3. concerning partition of lands in *coparcenary, joint-tenancy,* and *tenancy in common,* do not concern *copyholds.*

Persons who have lands, *&c.* by several, and not joint titles, and the severalty not distinguished, whether in *fee-simple, fee-tail,* or *for life,* are deemed *tenants in common.*

If lands be conveyed by lease and release to the use of all and every the children of *J. G.* and their heirs equally to be divided amongst them; these words "equally to be divided" make a tenancy in common. 2 *Wilson,* 341.

If a tenant in common aliens his share to another in fee, or gives it to another in tail, such alienee or donee becomes tenant in common with the other joint-tenants; and if he proves survivor, is intitled to the fee.

The same doctrine which holds among tenants in common, in estates in fee-simple, or fee-tail, holds also between tenants for life.

Where two persons have held lands in common undivided, one half from his ancestors from whom the estate descended to them undivided from time immemorial, such are tenants in common by *title of prescription.*

The essential difference between joint-tenants, and tenants in common, consists in this, joint-tenants hold the estate by one joint title, and in one right; and *tenants in common* hold by several titles, or by one title and several rights; whereas a joint-tenant enjoys one joint freehold, and tenants in common several.

There are also other tenures, as by *mortgage*, *elegit*, *ancient demesne*, *statute-merchant*, *statute-staple*, *&c.*

The LAW of DESCENTS †.

By the Common Law.

IN descents, the law prefers the worthiest of blood.

Thus in descents immediate, the male is preferred before the female, *viz.* the son before the daughter, the brother before the sister, and the uncle before the aunt.

And in descents immediate, the descendants from the males are preferred before those from the females; and hence it is, that the daughter of the eldest son, (in descents from the father) is preferred before the son of the younger son; the daughter of the eldest brother, or uncle, before the son of the younger; and the uncle, nay, the great uncle or grand-father's brother, before the uncle of the mother's side.

The next of blood is preferred before the more remote, though equally or more worthy.

Thus the sister of the whole blood, before the brother of the half blood; upon this subject, see 3 *Wilson*, 516.

The son or daughter, before the brother or sister, and they before the uncle.

But the father or grand-father, or mother or grand-mother in a direct ascending line, shall not immediately succeed the son or grand-child: the father's brothers (or sisters) shall be preferred before the father; and the grand-father's brothers (or sisters) before the grand-father; although the father is nearer of blood to the son than the uncle, or the brother, for the brother is of the blood of the brother, because both derive from the same parent,

† See *Blackst. Com. Lib.* II. *ch.* 14. *Title by descent*, *p.* 200, *&c. &c.*

the common fountain of both their blood: and therefore the father is preferred in the administration of goods, before the son's brother of the whole blood, and a remainder limited to the next of blood of the son, shall vest in the father before the uncle.

All the descendants from such a person as might have been heir to another, hold the same right by representation as that common root from whence they are derived.

Thus the son, or grand-child (whether son or daughter) of the eldest son, succeeds before the younger son.

The son or grand-child of the eldest brother, before the youngest brother.

And so on through all the degrees of succession by the right of representation, the right of proximity is transferred from the root to the branches, and gives them the same preference as the next and worthiest of blood.

Whence the great grand-child of the eldest brother (son or daughter) shall be preferred before the younger brother; because though the female be less worthy than the male, yet she stands in right of representation of the eldest brother, who was more worthy than the younger.

Thus if a man has two daughters, and the eldest dies in the father's life, leaving six daughters, and then the father dies; the younger daughter shall have an equal share with the other six daughters.

Without a special custom to the contrary, the eldest son, brother, or uncle, excludes the younger; and the males in equal degree do not all inherit: but all the daughters, whether by the same or divers *venters* do inherit together to the father, and all the sisters by the same *venter* do all inherit to the brother.

The last actual seisin in any ancestor, makes him, as it were, the root of the descent equally, to many intents, as if he had been a purchaser: therefore he cannot derive his succession from him that was last actually seised though he might have derived it from some precedent ancestor, and therefore shall not inherit.

Hence it is, that where lands descend to the eldest son from the father, and the son enters and dies without issue, his sister of the whole blood shall inherit as heir to the brother, and not the younger son of the half blood.

If the eldest son had survived the father, and died before entry, the youngest son should inherit as heir to the

father, and not the ſiſter, becauſe he is heir to the father that was laſt actually ſeiſed.

And hence it is, that though the uncle is preferred before the father in deſcents from the ſon, yet if the uncle enters after the death of the ſon, and dies without iſſue, the father ſhall inherit to the uncle.

Whoſoever derives a title to any land, muſt be of the blood to him who firſt purchaſed it.

Thus, if a ſon purchaſes lands, and dies without iſſue, it ſhall deſcend to the heirs of the part of the father; and if he has none, then to the heirs of the part of the mother.

But if the father purchaſes lands, and they deſcend to the ſon, who dies without iſſue, and without any heir on the part of the father, it ſhall not deſcend in the line of the mother, but *eſcheat.*

If there be none of the blood of the grand-father, yet it may reſort to the blood of the grand-mother, her blood being as well of the blood of the father, as the mother's conſanguinity is of the blood of the ſon.

If the grand-father purchaſed lands, which deſcended to the father, and from him to the ſon, if the ſon enters and dies without iſſue, his father's brothers or ſiſters, or their deſcendants, or, for want of them, his great grand-father's brothers or ſiſters, or their deſcendants, or, for want of them, any of the conſanguinity of the great grand-father, or brothers or ſiſters of the great grand-mother, or their deſcendants, may inherit, the conſanguinity of the great grand-mother being the conſanguinity of the father.

But none of the line of the mother or grand-mother, *viz.* the grand-father's wife, ſhall inherit; for they are not of the blood of the firſt purchaſer.

Note, The ſame rule holds in purchaſes in the line of the mother or grand-mother, they ſhall always keep in the ſame line that the firſt purchaſer ſettled them in.

But it is not neceſſary that he that inherits be always heir to the purchaſer; it is ſufficient if he be of his blood, and heir to him that was laſt ſeiſed; for if the father purchaſed lands which deſcended to the ſon, who dies without iſſue, they ſhall never deſcend to the heir of the part of the ſon's mother; but if the ſon's grand-mother has a brother, and the ſon's great grand-mother has a brother, and there are no other kindred, they ſhall deſcend to the grand-mother's brother; and yet if the father had died without iſſue, his grand-mother's brother ſhould have been preferred

preferred before his mother's brother, because the former was heir on the part of his father, though a female, and the latter was only heir on the part of his mother. But where the son is once seised, and dies without issue, his grand-mother's brother is to him heir of the part of his father, and being nearer than his great grand-mother's brother, is preferred in the descent. But this is always intended so long as the line of descent is not broken; for if the son alien those lands, and then purchase them again in fee, *then* the rules of descent are to be observed, as if he was the original purchaser, and as if it had been in the line of the father or mother.

In all successions, in the line *descending*, *transversal*, or *ascending*, the line that is first derived from the male root has always the preference: For example,

In the Line Descending.

If *A.* has issue two sons *B.* and *C.* *B.* has issue a son and daughter *D.* and *E.* *D.* the son has issue a daughter *F.* and *E.* the daughter has issue a son *G.* Neither *C.* nor any of his descendants shall inherit, so long as there are any descendants from *D.* and *E.* and neither *E.* the daughter, nor any of her descendants shall inherit, so long as there are any descendants from *D.* the son, whether they be male or female.

In the Collateral Line.

As brothers and sisters, the same instances as before applied thereto, evidence the same conclusion,

As to SUCCESSIONS in the LINE ASCENDING.

The First Rule in the Ascending Line.

If a son purchases lands in fee-simple, and dies without issue, those of the male line ascending to infinity shall be preferred in the descent, according to their proximity of degree to the son.

Thus the father's brothers and sisters, and their descendants, shall be preferred before the brothers of the grandfather and their descendants.

If

If the father has no brothers nor ſiſters, the grand-father's brothers and their deſcendants take the eſtate.

For want of brothers, his ſiſters and their deſcendants ſhall be preferred before the brothers of the great-grand-father.

For although the father or grand-father cannot immediately inherit to the ſon, yet the direction of the deſcent to the collateral aſcending line, is as much as if the father or grand-father had been by law inheritable; and therefore as in caſe the father had been inheritable, and ſhould have inherited to the ſon before the grand-father, and the grand-father before the great-grand-father, and conſequently if the father had inherited, and died without iſſue, his eldeſt brother and his deſcendants ſhould have inherited before the younger brother and his deſcendants; and if he had no brothers, the ſiſters and their deſcendants ſhould have inherited before his uncles or the grand-father's brothers and their deſcendants. So though the father is excluded from inheriting, yet the deſcent is directed as it ſhould have been, had the father inherited, *viz.* it lets in thoſe firſt that are in the next degree to him.

The Second Rule in the aſcending Line.

The line of the part of the mother ſhall never inherit as long as there are any, tho' never ſo remote, of the line of the part of the father.

Thus, if the mother has a brother, yet if the great great great grand-father, or great great great grand-mother of the father has a brother or ſiſter, he or ſhe ſhall be preferred, and exclude the mother's brother, tho' he is much nearer.

The Third Rule in the aſcending Line.

The male line of the part of the father aſcending, ſhall for ever exclude the female line of the part of the father aſcending.

Thus, if a ſon purchaſes lands and dies without iſſue, the ſiſter of the father's grand-father, or of his great grand-father, and ſo *ad infinitum* ſhall be preferred before the father's mother's brother, although the father's mother's brother is a male and the father's grand-father or great grand-father's ſiſter is a female, and more remote; yet

ſhe

she is of the male line, which is more worthy than the female line, tho' the female line is also of the blood of the father.

The Fourth Rule in the ascending Line.

As in the male line ascending, the more near is preferred before the more remote; so in the female line descending, if it be of the blood of the father, the more near is preferred before the more remote.

Thus, if one purchases lands and dies without issue, and the father, grand-father, and great grand-father, and so upwards, all the males being dead, without any brother or sister, or any descending from them; but the father's mother or sister has a brother; all these are of the blood of the father, and the remotest of them shall exclude the son's mother's brother; and tho' the great grand-mother's blood has passed through more males of the father's blood than the blood of the grand-mother or mother of the father; yet the father's mother's sister shall be preferred before the father's grand-mother's brother, or the great grand-mother's brother; because they are all in the female line, and the father's mother's sister is the nearest in the male line, so she shall have the preference, as well as in the male line ascending, the father's brother or his sister shall be preferred before the grand-father's brother.

The Fifth Rule in the ascending Line.

But yet in the last case where the son purchases lands, and dies without issue, and without any heir on the part of the grand-father, the lands descend to the grand-mother's brother or sister, as heir on the part of his father.

Yet if the father had purchased these lands and died, and it had descended to his son, who died without issue, the lands should not have descended to the father's mother's brother or sister, for the reasons in the *third rule*, but for want of brothers or sisters of the grand-father's great grand-father, and so upwards in the male ascending line, it should descend to the father's grand-mother's brother or sister which is his heir of the part of the father, who should be preferred before the father's mother's brother, who is the heir of the part of the mother of the purchaser,

purchaſer, tho' the next heir of the part of the father of him that laſt died ſeiſed, and therefore, if the father that was the purchaſer had died without iſſue, the heirs of the part of the father, whether of the male or female line, ſhould have been preferred before the heirs of the part of the mother: ſo the ſon, who ſtands now in the place of the father, and inherits to him primarily in his father's line, dying without iſſue, the ſame devolution and hereditary ſucceſſion ſhould have been as if his father had immediately died without iſſue, which ſhould have been to his grand-mother's brother, as heir of the part of the father, tho' by the female line, and not to his mother's brother, who was only heir of the part of his mother, and who is not to take till the father's line both male and female be ſpent.

The Sixth Rule in the aſcending Line.

If the ſon purchaſes land, and dies without iſſue, and it deſcends to any heir of the part of the father, and then if the line of the father (after entry and poſſeſſion) fail, it ſhall never return to the line of the mother; tho' in the firſt inſtance, or firſt deſcent from the ſon, it might have deſcended to the heir of the part of the mother. For now by this deſcent and ſeiſin it is lodged in the father's line to whom the heir of the part of the mother can never derive a title as heir, but it ſhall rather *eſcheat.*

But if the heir of the part of the father had not entered, then the line had failed, it might have deſcended to the heir of the part of the mother, as heir to the ſon, to whom immediately, for want of heirs of the part of the father, it might have deſcended.

The Seventh Rule in the aſcending Line.

And (for the ſame reaſon) if it had once deſcended to the heir of the part of the father of the grand-father's line, and the heir had entered, it ſhould never deſcend to the heir of the part of the father of the grand-mother's line; becauſe the line of the grand-mother was not of the blood or conſanguinity of the line of the grand-father's ſide.

The Eighth Rule in the ascending Line.

If for default of heirs of the purchaser of the part of the father, the lands descend to the line of the mother, and the heirs of the mother of the part of her father's side, shall be preferred in the succession before her heirs of the part of her mother's side; because the heirs of the part of her father are the more worthy.

Descents by Custom.

Descents in fee simple by custom are of several kinds; sometimes to all the sons, or to all the brothers where one brother dies without issue, as in *gavel kind*; all the lands in *England* were in nature of *gavel kind* before the *Norman* conquest, and descended to all the issue equally; but as the *Normans* did not conquer *Kent*, this custom or tenure is still preserved in some places there. Sometimes the lands descend to the youngest son, as in *Borough English*, and sometimes to the eldest daughter, or the youngest, *&c.*

Descents by Statute.

Descents in fee-tail according to the statute of *Westminster* 2. or *stat.* 13 *Ed.* 1. *c.* 1. are directed by the manner of the settlement or limitation.

Of GRANTS, LEASES, and RESERVED RENTS.

IF any rent is reserved on a lease for life, such reservation makes the same void*.

If a tenant for life in lands, *&c.* leases the same for a certain number of years, and the lessee assigns such lands by *parol* without deed rendering rent, tho' such assign-

* This is a mistake; for by the *stat.* of the 8th of *Q. Ann. ch.* 14. *sect.* 4. it shall be lawful for any person having rent due upon any lease for life to bring an action of debt for such arrears, as upon a lease for years.

ment

ment operates as a ſurrender, yet it is not an expreſs ſurrender; and if the rent reſerved thereon was not good by way of reſervation, yet it ſhall be deemed good by way of contract.

By ſtatutes 32 *Hen.* 8. 13 *Eliz.* and 18 *Eliz.* any perſon ſeiſed of lands, tenements, *&c.* in fee-ſimple, may demiſe the ſame for any time or number of years he thinks proper.

A perſon of full age, being tenant in tail of lands, tenements, *&c.* may, by deed, demiſe the ſame, though they have been let for twenty years next before ſuch leaſe made, reſerving the former rent, or more, for a term not exceeding three lives, or twenty-one years. In ſuch leaſe, the words *without impeachment of waſte*, muſt be left out, and it muſt commence from the date or making thereof. If the old leaſe is ſubſiſting, it muſt be ſurrendered or expire within a year after, or the new one, if it continues longer, will be void. This leaſe will operate againſt the iſſue of the tenant in tail, if ſuch tenant dies before the ſame expires. If he ſhould die without iſſue, the donor may void the term by an entry, ſo may he in remainder, and the accepting of rent does not confirm ſuch leaſe.

A man poſſeſſed of lands, *&c.* in fee-ſimple or fee-tail in right of his wife, may by deed demiſe his wife's lands, ſo held to him and his wife; but ſhe muſt be a party to the leaſe, and execute the ſame, and the rent reſerved muſt be to himſelf and his wife, and to the heirs of his wife. If ſo made, the leaſe will operate againſt the wife, and her heirs after her deceaſe.

A leaſe made by the leſſor to the leſſee, from year to year during their mutual pleaſure, after entry made is a leaſe for that year, and until half a year's warning be given by one of the parties, to the other of quitting the farm.

A leaſe can only be made void by the leſſor, and that is, by *his entry*. It may be made voidable by the *laches* of the leſſee, in not paying his rent according to the covenants therein; but if the leſſor afterwards accepts the rent, that which was before voidable becomes a good leaſe by ſuch acceptance.

A leſſor of a leaſe of lands, tenements, *&c.* for a term of years may maintain an action of *debt* for rent againſt the executor or adminiſtrator of his leſſee, after aſſignment made by him of ſuch leaſe, the aſſignment not being good till notice thereof is given to the leſſor, and the arrears of rent paid or tendered.

Note:

Note: If no arrears, no notice is necessary.

If a lessor grants a term at a reserved rent, and afterwards assigns such rent, and the lessor attorns tenant to such assignee, he may maintain a distress or an action of debt against the lessee for the rent reserved, when in arrear.

In grants, leases, *&c.* under the name of *lands*, are understood not only gardens, meadows, pastures, rivers, woods, moors, waters, marshes, furze, heath, but messuages, houses, tofts, mills, castles, *&c. Co. Litt.* 4. *a.*

If a person lets lands, *&c.* at will, and afterwards does any act inconsistent with such letting, the lessee may avail himself thereof to determine such holding; as for example, if the lessor declares the lessee shall hold the premises no longer, the lessee, on knowledge and proof of these words, may deliver up possession of the premises to the lessor.

A lease for a year, reserving a *pepper corn* only, is held to operate as a bargain and sale, and makes the lessee capable of taking a release according to the tenure of the grant.

A lease for *ninety-nine years*, to hold if two persons so long live, without saying (*or either of them*) will determine on the death of either.

In leases between parties, if the same is only sealed by the lessor, and not by the lessee, yet it is good, and will operate against the lessor; and if there is any mistake in the indentures of lease, it will be taken as the deed of the lessor, and the mistake considered only as the act of the transcriber.

Where a lease for lands has an *exception* of a close or wood, if a passage thro' the same be absolutely necessary for the tenant to come at the demised premises, the law gives him a right of passage through the same, notwithstanding such exception.

Acceptance of a new lease for a further term, in idea of law vacates the old one.

Where a tenant for life, or years, removes his goods out of the house or lands, and the lessor enters therein, this is no surrender of the lessee; but if he continues therein after demand made of the said premises by the lessee, an action of *trespass* will lie for such *illegal* entry.

If a man makes a lease to another without any consideration, the lessee may seize to his own use; or if he makes a lease to another, and to his heirs for any given term, intending that if the lessee dies within that term,

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in that case his heirs should enjoy the premises during that term, this demise is void; for if the lessee dies, his executors, and not his heirs, shall enjoy the term; for by the established laws of the land, *all chattels* devolve to the executor, and not to the heir.

By a demise of a house with the appurtenances, no land can pass, but if such demise has the words *with all lands* thereunto belonging, in that case the lands used therewith will pass.

If a man makes a lease for a longer term than he has therein, a court of equity will establish such lease for his term.

On a lease assigned to another, if the lessor accepts rent of the assignee, this is deemed a sufficient notice to him of the assignment, and he cannot afterwards resort back to the first lessee for the rent.

In a lease of a house, if the lessor excepts *two rooms and free passage thereto*, if the lessee assign such lease, and his assignee disturbs the lessor in such right of passage, an action of *covenant* lies for such disturbance; if it had been in the rooms excepted, no action of covenant would have lain, because they were not demised; but where a lessee agrees to let the lessor have any thing out of a demise, as a way, common, *&c.* he has his redress by action of covenant.

If a lessee of a term puts up any thing in a house for the convenience of his business, he may remove the same at any time during the term; but what he does in beautifying the premises, he cannot remove, the general rule being, that whatever is fixed on or to the freehold becomes part thereof, and reverts to the lessor.

If a man lets a parcel of land by the description of all his meadow land in *C.* containing *twenty acres*, yet if the same should be *forty acres*, it will pass by this demise.

Demises of lands, *&c.* to take effect from the day of the date, do not commence until the next day after the deed bears date; but if it is with *To have and to hold from the date*, or *from the making of the indenture*, in either of these cases, it immediately operates.

A lease to hold from *henceforth* shall be computed from the day of the delivery, and from the making shall be taken *inclusive* of the day of the making; the day of delivery is *inclusive*, and is considered as the first day of the term; if it is made *To hold* from the day of the date, or

or the day of making, then the day of the date or making shall be *exclusive*; *See* 1 *Wilson* 176. 2 *Wilson* 165.

Note: It is otherwise if *To hold* from the date and it is delivered on the same day.

If an *habendum* of a lease be for a term of *twenty-one years*, without mentioning when the same is to commence, it shall be held to begin from the delivery; or if a lease bears date on a day impossible, if the same be limited to begin from the date thereof, it shall take effect and commence from the delivery of such lease as if there was no date thereto. *Co. Lit.* 46. *b.*

When a man makes a lease to another for *twenty-one years*, and afterwards makes another to him, to commence from the expiration of the first term, after the first lease is surrendered, the second shall immediately commence; but it would have been otherwise if it had been to commence from the end of the said *twenty-one years*; for had there been a surrender, yet such second lease would not have commenced till the first term had been expired, because the law makes a distinction between a *term* and *time* of years. *Co. Lit.* 45. *b.*

Where leases are made for a certain number of years, if two or more persons so long live, this term ceases on the death of all the lessees.

An infant seised of lands in *socage* may make a lease at the age of *fifteen years*.

A lease for years with these words therein contained, *viz. demise, grant, and to farm let*, does not impower the lessee to bring an action of *trespass*, until he has taken actual possession thereof; but the words, *bargain and sell*, when for a pecuniary consideration, though ever so small, gives the party immediate possession as soon as the deed is executed, and enables him to bring the above action.

On letting lands where there are mines or trees thereon, the lessor cannot enter to take the same without being guilty of a trespass, unless he reserves to himself such a privilege on the demise; but if he enters grounds demised by him to another, he is no trespasser; for the law will presume that he entered to see if waste was done.

The loss of a lease does not affect the term demised thereby, so that the lessee can prove such term is still subsisting and undetermined.

A lease or deed may be dated as far back as you will before sealed, but it may not be dated forwards. Deeds made by compulsion through threatenings, *&c.* are void;

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and the foundation of deeds ought to be good and honeſt, and not to perfect any unlawful contract. All conveyances, grants, *&c.* made of lands or tenements to defraud any purchaſer of the ſame for valuable conſideration, as againſt ſuch purchaſer, and every other perſon lawfully claiming under him, ſhall be void. 27 *Eliz. ch.* 4.

All *deeds*, *gifts*, *grants*, and *leaſes*, made by a man while under *dureſs of impriſonment* are voidable, not only by the party making the ſame, but by his heirs, and thoſe who derive their eſtates from him.

Perſons unable to read are not compellable to do any act or deed without having a proper perſon with them, who can read and explain the ſame; yet if they do ſuch act it will bind them.

In leaſes of lands at *will*, neither the leſſor nor leſſee can determine ſuch *will* to the prejudice of each other; but the ſame muſt be governed and go according to the nature and cuſtom uſed in holding ſuch lands.

A tenant at *will* of lands, if his term be out, or he be *ouſted* thereof, if he ſows ſuch lands, ſhall notwithſtanding have liberty to reap and carry away his corn; but if he is tenant on *leaſe for years*, he ſhall not have ſuch privilege, becauſe he knew when his leaſe would determine, and did it at his peril, unleſs ſuch leaſe contains a covenant, that the leſſee ſhall have his *way-going crop*; the doctrine is, that a tenant at *will*, or his executors, ſhall be entitled only to ſuch things on the land as bring a yearly profit.

A man ſeiſed of land in right of his wife, ſows the ſame, and dies, his executors ſhall be entitled to the corn growing thereon; but if he and his wife had been joint-tenants of ſuch land, the wife, on his death, would have been intitled to the corn by ſurvivorſhip.

A leaſe made by a huſband of the wife's lands in his own name only, is void after his death; if in their joint-names, the term would continue; yet notwithſtanding the leaſe is void, the leſſee ſhall have the corn ſown on ſuch lands.

Eſtovers.

Note: There are three kinds of *eſtovers* in law, which are incident to the eſtate of every tenant, whether for life, or years.

Eſtover

Estover or *boot* signifies an allowance, or satisfaction; and any of these a tenant may take without assignment of the landlord, unless he is by the landlord restrained by special covenant in his lease, which is usual among landlords, especially if the farm is any thing considerable. when they commonly limit the tenant how much *house-boot*, *plough-boot*, or *hedge-boot*, he may take without assignment, and how much by assignment.

House-boot is of two kinds, the one to repair the houses, the other to burn, which is called *fire-boot*.

There is an *estover* called *plough-boot*, *viz*, stuff to mend the tenant's ploughs, carts, harrows, wains, and for making rakes and forks, for getting in his hay and corn.

The *estover* called *hedge-boot*, or *hay-boot*, is timber and wood for making gates and stiles, and boughs and bushes for mending and repairing hedges and fences.

If a tenant for life or years cuts down trees, or pulls down houses, or suffers them to fall down, the lessor shall have the trees and timber of the said houses; for the lessee had them only as things annexed to the land, and this severance will not give him a greater estate in them, but his interest is then determined.

The landlord shall likewise have *wind-falls*; that is timber-trees blown down by wind and tempest, because they are parcel of his inheritance, so that the tenant for *life* or *years* cannot have them, unless it be to build withall, where houses are in decay; but if they are dotards or pollards without timber, which bear neither leaves nor fruit in summer, the tenant shall have such when they are blown down.

Estovers granted to be burnt in a house, go to the person that has the house by whatsoever title; for one is inseperably incident to the other.

Lessees for *life* or *years*, tenants in *dower* or by *curtesy*, or tenants *in tail after possibility*, *&c.* have only a special interest or property in the trees, as things annexed to the lands, so long as they are annexed thereto; but if they or any other sever the trees from the land, then their interest is determined, and the lessor may take the trees as things that are parcel of his inheritance, the interest of the lessee being determined.

If a stranger cuts down a tree growing on the land of a lessee for *years*, and carries it or the bark thereof away, the lessor at his election may have either an action of *trover* against the stranger, or an action of *waste* against

the lessee; for the property of the timber is always in the lessor.

If a person has *estovers* uncertain in *ten acres* of wood, and *five* of them descend to him, he shall have the whole out of the residue.

If a man grants to another *estovers* uncertain in such a wood, and afterwards the grantor makes such waste in the wood, as that there is not sufficient store left, out of which the grantee may take his *estovers*, in this case he may have a writ of *quo minus* against the grantor, which is in the nature of a *prohibition*.

By *stat.* 4 & 5 *Ann.* "All grants and conveyances to "be made, by fine or otherwise, of any manors or "rents, or of the reversion or remainder of any mes-"suages or lands, shall be good and effectual to all in-"tents and purposes without any attornment *(i. e. ac-"knowledgment)* of the tenants of any such manors, or "of the land out of which such rent shall be issuing, or "of the particular tenants upon whose particular estate "any such reversion or remainders shall or may be ex-"pectant or depending, as if attornment had been made.

"*Provided nevertheless*, that no such tenant shall be "prejudiced or damaged by payment of any rent to "any such grantor, or conusor, or by breach of any "condition for non-payment of rent, before notice shall "be given him of such grant by the conusee or grantee.

Note: Where a lease is made to commence from a day to come that day is excluded.

By *stat.* 2. 6 & 7 *Ann.* All deeds of purchase, &c. of lands in the counties of *Middlesex* and *Yorkshire* are to be registered.

The MANNER of DEMANDING, and PAYING RENT.

EVERY quarter's rent is considered in law as a several debt from the lessee to the lessor, for which the lessor may distrain, or bring distinct actions of debt for each quarter's rent due and in arrear.

In an ecclesiastical distribution of a testator's or an intestate's estate, rent is payable by an executor or administrator before bonds, because it savours of the *realty*, and arises from the profits of the land received.

A lease

A lease can only be made void by the lessor, that is *by his entry*. It may be made voidable by the *laches* or default of the lessee, in not paying his rent according to the covenants therein; but if the lessor afterwards accepts the rent, that which was before voidable becomes a good lease by such acceptance.

A lessor, of a lease of lands, tenements, *&c.* for a term of years, may maintain an action of *debt* for rent against the executor or administrator of his lessee, after assignment made by him of such lease, the assignment not being good till notice thereof is given to the lessor, and the arrears of rent paid or tendered; if there is no arrears due, no notice is necessary.

If a lessor grants a term at a reserved rent, and afterwards assigns such rent, and the lessee agrees to become tenant to such assignee, he may maintain a distress or an action of *debt* against the lessee for the rent reserved, when in arrear.

Rent in arrear on a demise for a certain number of years goes to the executor of the lessor, if he dies, and not to his heirs, because rent once due, becomes a *personalty*.

Where there is a covenant in a lease, that if the rent be behind and unpaid for such a number of days after the usual day or time of payment, then such lease to be void; in that case, if the lessor accepts the rent after such lapse, it does not make such lease good.

On a bond for performance of the covenants of a lease, if the lessee fails in payment of the rent such bond is forfeited; for the payment of the rent is part of the condition of the bond: for example, if *A.* lets a parcel of land to *B.* on lease, with a reservation of 5 *l.* rent to himself, payable at a future day, and *B.* binds himself in a bond of 200 *l.* to pay such reserved rent, and before any day of payment, *A. ousts B.* out of any part of the said demised premises and he occupies the remainder for the whole term, and refuses to pay any rent, yet the bond is not forfeited; for by *ousting* the tenant out of part of the demised premises, the whole rent becomes in suspence, as it arose from the lessor's own act; but if one day of payment be past before the *ouster*, the tenant must either pay the rent, or forfeit his bond; or if the tenant be put out of the land by a stranger, who keeps possession thereof until a day of payment of rent be past, he must pay such rent on the day whereon it was agreed to be paid, or he incurs the forfeiture aforesaid, because his remedy at law is against the stranger.

A man granting a lease on condition that the rent shall be paid at a given time, if, before that time comes, the lessor gives the lessee a general release of all actions and demands, this release will not acquit the lessee of the rent, because it was neither due, nor paid at the time the release was given.

A person having a lease of lands for any given term, *&c.* and demises some part of such term, at a reserved rent, in that case he may distrain for the reserved rent, or bring an action of *debt* for the same, because the remainder vests in him.

Where any person *holds* lands for a term in right of his wife, and demises the same to another for a less term, at a reserved rent, and dies, the executors of the husband are entitled to the rent during that term, and at the expiration thereof the remainder of the original term reverts to the wife, who would have been entitled to nothing if her husband had granted the whole term.

A general release of all *demands* does not release rent due on a lease.

A rent granted by two or more tenants in *common*, is *several*; but if they make a lease with a reserved rent, they are entitled to no more than the amount of such reserved rent between them all.

If two or more *co-parceners* make a lease with a reserved rent, they are intitled to this rent in *common*, because the reversion remains in them; but if they afterwards grant the reversion exclusive of the rent, they, by this act, make themselves *joint-tenants* to the rent.

Where lands have been leased for a term on a reserved rent, and a stranger recovers part of the lands, the tenant must pay to each party in proportion to the quantity that he holds from them respectively.

The executors of a tenant on lease who has assigned over his term, are not answerable for rent due after his decease; for if a tenant for years assigns his lease, the landlord may charge which of them he will; but if he once accepts of the rent from the assignee, knowing of the assignment, he cannot afterwards bring an action of *debt* against the lessee for rent due after the assignment: however the lessor or his assignee may bring an action of *covenant* against the first lessee on his covenant for payment of rent.

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Where a lessor grants away the reversion after the assignment of the lessee, the grantee cannot maintain an action of *debt* against the lessee for the rent.

Rent payable at the four quarterly feasts, or within any given number of days after, the lessee or tenant is not bound to pay such rent until the last day limited for payment thereof. If there is a clause in the lease, that if the rent be behind, or unpaid for the space of *fifteen days* (more or less) after any of the *feast days*, then such lease to be void; in this case, if the time limited be *fifteen days* the tenant shall have *thirty days* after any of the said *feasts* to save his lease and pay his rent; but if it be, that if the rent be behind, or unpaid for the space of *fifteen days next* after either of the said *feast days* or days of payment, in such case the lessee or tenant has but *fifteen days* only allowed him.

The rent of premises on lease, where there are special days limited for payment thereof, must be computed according to the *day of payment* thereof, and not according to the *holding* thereof, but where the reservation is general, as *half yearly*, or *quarterly*, and no special days mentioned, there the half year or quarter must be computed according to the *holding*.

If a lessor or landlord demises premises on a lease to a lessee or tenant to pay the rent on the *four feast days*, or within *fifteen days* after either of them, and the lessor or landlord dies after either of the said feast days, the heir of the lessor shall have the rent, because the *feast day* is but *voluntary*, and the *legal day* of payment is at the end of the *fifteen days*.

If a lessee or tenant for years be bound in an obligation for the payment of his rent, precisely at a day, it is his duty to seek out the lessor or landlord, and tender him the rent; but if the bond be to perform the covenants in the lease, he may then tender his rent on the land, (if no particular place is mentioned for the payment thereof).

If a man has a *rent-service* or *rent-charge*, and accepts the same on the last day of payment thereof, and gives a discharge for the same, it will be deemed an acquittance from all arrears due before.

In payment of rent at a certain day, the lessee or tenant has all that day, and 'till night to pay the same; but if the rent is a large sum, he should have it in readiness before sun set, that the lessor or landlord may have

day-light enough to tell his rent; for he is not obliged to take it by candle-light.

A lease for years by *parol* or *deed-poll*; from joint-tenants, reserving rent to one of them, such rent shall *enure* to both; but if it be by deed indented, it will *enure* to such person by way of conclusion.

A man holds lands in right of his wife, and they lease the same at a reserved rent, if the husband dies, and the wife, before the rent becomes due, marries again, and such second husband accepts the rent, and dies, this acceptance of the second husband confirms the lease.

A person demising land for *life* or *years* at an annual rent, and afterwards enters on the said premises, and takes the profits, by this act the whole rent is discharged, and shall continue suspended while he holds the same.

If a person having a lease for years at a reserved rent, assigns over the same, if he gives his assignee a *release of all demands*, it will be an extinguishment of such reserved rent; but a reserved rent incident to a reversion is not barred by such release.

If a parson lets his glebe-lands to a lay-man, the tenant shall pay the parson tithe of that land, besides the rent, for the tithe is his property of common right.

If the successor of a parson or vicar accepts the rent of a lease for years made by his predecessor; yet this acceptance is worth nothing, for the lease is void by death; a lease for life is otherwise.

If a bishop accepts rent on a lease for years, he shall never avoid the same; it was, before such acceptance, voidable only, but *that* confirms it.

If a parson lets a lease for years of his glebe-land, if it be confirmed by the patron and ordinary, it shall bind the successor, or else not.

A tenant may tender his rent on any part of the premises to his landlord on the last day of payment, which tender will save him the condition of his lease, tho' it is not the most *notorious* place.

A *tender* should be in the current coin of the kingdom, of the whole rent due, without any deduction of taxes or assessments, or any other charges whatsoever; but by the land-tax act, he may now tender the land-tax receipt in part of payment.

The sun-setting is the time the law appoints to demand rent in order for a re-entry, or to tender the same to save a re-entry or forfeiture; yet in strictness of law such

ſuch rent is not due till midnight; for if the leſſor dies before midnight, his heirs, and not his executors, ſhall have the rent.

If a man makes a leaſe for years, reſerving rent *generally*, without ſaying to whom, the law will deem ſuch rent to be paid to the perſon who has the reverſion.

A leaſe with a *proviſoe*, that in caſe of non-payment of the rent, the leſſor or landlord may re-enter; in this caſe, if the leſſor or landlord diſtrains, he loſes his right of re-entry; but he may accept the rent of the leſſee or tenant and yet re-enter; but if he receives the ſucceeding quarter's rent, he cannot then re-enter; for this act of the leſſor or landlord purges the leſſee or tenant of his breach, and re-eſtabliſhes his leaſe.

Entry into one acre of land in the name of the whole, is good, if all ſuch lands lie in one county.

A man making a leaſe for a certain number of years, at a rent payable to him and his heirs, on condition, that if the rent be behind or unpaid for the ſpace of *forty days* after the day appointed for payment thereof, that then the leſſor or landlord and his heirs are to re-enter; and after demand made of ſuch rent by the leſſor or landlord, he dies, and his heirs, in conſequence of the condition, re-enters, ſuch re-entry is lawful; but had the leſſor or landlord died after the feaſt days, and before the *forty days*, and had not demanded the rent, and his heirs had demanded the ſame on the *fortieth day*, and on non-payment had re-entred, in ſuch caſe the re-entry would not have been lawful.

Where, in a leaſe, the rent is directed to be paid at a particular place off the land, the demand of ſuch rent muſt be made at the place ſpecified in the leaſe.

If a leſſor or landlord wiſhes to take advantage of a re-entry for non-payment of rent, the perſon who demands the ſame muſt be careful not to demand a penny more or leſs than what is due; he muſt ſhew the certainty of the rent, and when due, or ſuch demand is not good, nor will a re-entry be given, unleſs the demand be preciſely and diſtinctly followed.

Tenants kept out of their premiſes, by rebellion, civil diſcord, or other inevitable accidents, muſt, notwithſtanding, pay their rent; nor can they be relieved in equity.

A leſſor or landlord of a term, if he accepts the rent of the leſſee or tenant, ſhould the money received afterwards

wards appear bad, or defective in weight, he has by such acceptance barred himself from any remedy by re-entry.

On a lease conditioned that the lessee or tenant *shall do no waste*, if he commits waste, and the lessor or landlord afterwards accepts the rent, he waives his right of re-entry; if it had been conditioned *that if he committed waste that then his estate should cease*, in that case, if the lessee or tenant commits waste, no acceptance of the rent afterwards will make the lease good.

The words *yielding and paying* in a lease, are deemed an express covenant in such lease, for payment of the rent thereof.

An action of *debt* did not lie for a rent reserved on a lease for life, under *stat.* 32 *Hen.* 8. *cap.* 37. without shewing that the estate was determined; but now by *stat.* 8. *Annæ, ch.* 14. *sect.* 4. debt doth lie.

In an action of *debt* for rent on a demise at will, it lies on the plaintiff to shew, that the defendant occupied the premises, when he entered, and how long he occupied the same; for his right of action only arises from such occupation.

In an action of *debt* for rent on *lease*, the plaintiff need not state the entry; for if the defendant never enters, he must pay the rent, the same accruing from the lease, which is the *contract*, and not from the *occupation*.

On condition of re-entry for non-payment of rent, and an *ejectment* brought thereon, the confession of lease, entry, and *ouster*, is sufficient; no proof of actual entry and *ouster* is necessary.

AGREEMENTS FOR LETTING HOUSES, APARTMENTS, *&c.*

Form of an Agreement for letting an Apartment.

MEMORANDUM made this —— day of ——, 1775, between *A. B.* of, *&c.* and *C. D.* of, *&c.* as follows:

THE said *A. B. doth* let unto the said *C. D.* the rooms and apartments following, *viz.* an entire first floor, the fore kitchen and cellar under it, and a fore garret, being part of the house, which he the said *A. B.* now

now lives in, situate, and being in ——— TO HAVE AND TO HOLD the said premises for and during the term of half a year, to commence from *Midsummer-day* next, after the date hereof, at and under the yearly rent of ——— pounds of lawful money of *Great Britain*, payable quarterly by even and equal portions, the first quarterly payment to be made on *Michaelmas-day* next ensuing the date hereof. AND it is further agreed by and between the parties hereto, that the said *C. D.* after the expiration of the said half year, may *hold* and *enjoy* the said premises from quarter to quarter, so long as both parties shall agree at the rent of ——— pounds for every quarter, and each party is at liberty to give a quarter's warning for the quitting possession of the said premises. AND it is also further agreed between the said parties, that when the said *C. D.* shall leave the said premises he shall leave the glass windows and other things belonging to the said premises in as good condition as they now are (reasonable wear only excepted) *As witness, &c.*

Witness,

For letting a House.

MEMORANDUM made the —— day of ———, 1775, between *A. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.*

THE said *A. B. doth* hereby demise and let unto the said *C. D.* a house and garden with the appurtenances, situate in ———, in the county of ———, late in the possession of *E. F.* and now of ———, for the term of *three years* certain, and a quarter's warning or notice to be given or left in writing by either of the said parties, to or for the other of them, at the end of the said *three years*. The rent thereof to commence from *Lady-day* next, at and under the yearly rent of ——— payable quarterly; the first payment thereof to begin and be made at *Midsummer-day* next.

THE said *C. D. doth* agree to take the said house of the said *A. B.* for the term, and at the said rent payable in manner aforesaid; AND ALSO that he will at his own costs and charges make good, or cause to be made good, and put into the same or as good condition and order as the same lately was in, the kitchen, or ground-room

of

of or belonging to the ſaid houſe, which he has now converted or cauſed to be converted into a cheeſe-monger's ſhop, at the expiration or other ſooner determination of this preſent demiſe; *And alſo* will then leave on the ſaid premiſes for the uſe of the landlord the paper hangings in the chambers, the back window-ſhutters, the ſtone-hearth, two ſhelves in the cloſet, one ſhelf in the kitchen, and another ſhelf in the waſh-houſe of and belonging to the ſaid houſe, *As witneſs, &c.*

Witneſs,

———

For letting a Houſe, with a Covenant for a Leaſe at the Option of the Leſſee.

MEMORANDUM made the —— day of ——, 1775, between *A. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.*

THE ſaid *A. B.* in conſideration of the rent herein after-mentioned and agreed to be paid to him, *hath* demiſed, and hereby *doth* demiſe, and let unto the ſaid *C. D.* a meſſuage or tenement, ſituate, and being in ——*court*, in the pariſh of ——, in the county of *M.* TO HOLD to the ſaid *C. D.* for the term of *one year*, to commence from *Chriſtmas-day* next, at the yearly rent of —— pounds, to be paid quarterly; *And* the ſaid *A. B.* doth hereby agree by or before *Chriſtmas-day* next, well and ſufficiently to repair, amend, and put in good and tenantable order and condition, the ſaid houſe with its appurtenances, in all needful and neceſſary reparations and amendments whatſoever; in caſe the ſame is not already in ſuch good and ſufficient repair and condition, and the ſame premiſes ſo to continue and keep in ſuch repair from thenceforth, for and during all ſuch time as the ſaid *C. D.* ſhall be and continue therein as tenant at will only.

The ſaid *C. D.* in conſideration thereof doth hereby agree to take and rent the ſaid houſe of the ſaid *A. B.* for the term, and at the rent, payable as aforeſaid, which ſaid rent ſhe agrees to pay unto him quarterly.

AND it is hereby mutually agreed between the ſaid parties, that after the expiration of the ſaid term of a year, if either of them ſhall be minded or deſirous to quit,

quit, leave, or part with each other, or from the said premises, she or he shall give one quarter's warning or notice in writing thereof to the other of them.

AND if after the said term of a year be expired, she the said *C. D.* shall be minded or desirous to have and take a lease of the said premises with the common and usual covenants, for a further term of *three* or *seven* years, at —— pounds a year, payable quarterly, and of such her intention and desire shall give notice in writing to the said *A. B.* within *three months* after the expiration of the said term of a year, that then he the said *A. B.* shall and will grant her such lease for such further term or terms, and at such rent, and payable as aforesaid, the costs and charges of such lease (if demanded by the said *C. D.*) is to be paid and discharged equally, by and between the said parties, *As witness, &c.*

Witness,

For granting a Lease of a House.

MEMORANDUM made this —— day of ———, 1775, between *A. B.* of, *&c.* of the one part and *C. D.* of the other part as follows, *viz.*

FIRST the said *A. B. doth* hereby agree at his own costs, with all convenient speed to execute unto the said *C. D.* a lease of ALL that messuage late in the possession of *E. D.* situate in ———, with the appurtenances, *To hold* to him the said *C. D.* his executors and assigns, from *Midsummer-day* now next ensuing, for the term of —— years, at and under the annual rent of —— pounds, payable quarterly, free of taxes (*except the land-tax*;) which lease shall contain all the usual and reasonable covenants, and particularly certain covenants that the said *A. B.* shall allow out of the *first year's rent of* the said premises the sum of —— pounds, towards the repairs thereof, and that he shall also pay all the taxes in respect of the said house to *Midsummer-day* next; and shall also indemnify the said *C. D.* and his assigns from the ground-rent thereof, during the said term; and that there shall also be inserted in the said lease, an exception against damages happening by fire, to the said premises, during the said term, in consideration whereof the said *C. D. doth*

hereby

hereby agree to accept ſuch leaſe, and to execute a counterpart thereof, when tendered to him for that purpoſe. *As witneſs, &c.*

Witneſs,

For a Leaſe of Garden-ground.

MEMORANDUM made this ——— day of ———, 1775, between *H. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.*

THE ſaid *H. B.* in conſideration of the rent and agreements herein after-mentioned, *doth* agree to demiſe, and let by a good and ſufficient leaſe in the law thereof unto the ſaid *C. D.* ALL that field with the appurtenances thereunto belonging, ſituate at or near adjoining to, *&c.* late in the occupation of *E. F.* a gardener, together with all ways, paths, paſſages, waters, watercourſes, eaſements, privileges and appurtenances whatſoever, to the ſame belonging or appertaining, or therewith held, uſed, occupied, poſſeſſed, enjoyed, or accepted, reputed, taken or known as part, parcel, or member thereof, or of any part thereof, *To hold* the ſame for the term of — years, from *Chriſtmas-day* laſt paſt, at and under the yearly rent of —— pounds, payable quarterly, The firſt payment thereof to be made at *Lady-day* next enſuing the date thereof. AND the ſaid *C. D.* is to have full and free liberty to lop and top the trees and hedges of the ſaid premiſes, at ſeaſonable and convenient times, and to plow up and erect upon the ſame any ſhed or ſheds, or other convenient buildings during the ſaid term, he from time to time ſcouring and cleanſing the ditches, and repairing and making good the fences, hedges, and gates thereof.

AND the ſaid *C. D.* in conſideration thereof *doth* agree to take the aforeſaid premiſes for the ſaid term, and at the ſaid rent, payable in manner aforeſaid, and to execute a counterpart of the aforeſaid leaſe; *And alſo* to ſcour, and cleanſe the ditches, and repair, make good, and keep up the fences, hedges, and gates of the ſaid premiſes, *As witneſs, &c.*

Witneſs,

For

For the Purchase of a House and Premises.

MEMORANDUM made this ——— day of ———, 1775, between *H. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.*

THE said *H. B. doth* hereby agree by good and sufficient conveyances in the law, at or before *Christmas-day* next, to assign, sell, and convey unto the said *C. D.* his heirs and assigns, free from all incumbrances whatsoever and howsoever; ALL those three houses, yards and appurtenances, together with all and every the grates, locks and fixtures, therein and thereon, situate in ——, in the parish of ——, *London*; *And also* a piece of ground near thereto adjoining, in the possession of *E. F.* Esq; *To hold* unto her the said *C. D.* her heirs and assigns for ever, at and for the price or sum of — pounds, of lawful money, *&c.* to be paid unto him by her, on a sufficient title being made out and executed unto her by him: *And also* to assign over unto her the several policies of insurance of the said houses, and to clear, pay, and discharge all taxes, charges, incumbrances, and impositions charged, or assessed on the said premises, unto *Christmas-day* aforesaid, and to indemnify her, or reimburse her on account thereof.

AND the said *C. D.* on her having by the conveyances aforesaid, the said premises assigned and conveyed unto her, at or by the time aforesaid, and in manner aforesaid, *doth* hereby agree to pay unto the said *H. B.* the price or sum aforesaid, for the same, and has now paid unto the said *H. B.* the sum of —— pounds, in part of the purchase-money aforesaid, *As witness, &c.*

Witness,

Note: Let there be a receipt for the money paid in part of the purchase.

For building a House.

MEMORANDUM made this ——— day of ———, 1775, between *H. B.* of, *&c.* of the one part, and *C. D.* of the other part, as follows:

THE said *C. D.* for the consideration herein aftermentioned, *doth* agree with the said *H. B.* that he the said *C. D.* or his assigns, will within the space of *three calendar months* next following the day of the date of these presents, find and provide all fit and proper materials and things, and erect, build, and finish, in a good, sound, substantial, and workman-like manner, one brick-house or building, on a piece or parcel of waste ground situate, *&c.* according to a plan thereof hereunto annexed, and of the dimensions following, *viz.* (*here insert the dimensions of the building, and scantlings of the timber intended to be used in the building thereof*) AND the said *H. B.* for the considerations aforesaid, *doth* agree with the said *C. D.* well and truly to pay, or cause to be paid, unto the said *C. D.* the sum of ——— pounds, of lawful money of *Great Britain*, in manner following, that is to say —— pounds part thereof as soon as the foundation of the said house shall be laid, ——— pounds other part thereof when the brick-work of the said house shall be carried up and tiled in, and the remaining ——— pounds, being in full payment of and for building the said house, when the same shall be completed, inside and out, fit for occupation, *subject* to the approbation of *E. F.* surveyor to the said *H. B.* AND LASTLY, the said *H. B.* and *C. D.* *do* further agree by these presents, to execute to each other, with all convenient speed, an article of agreement in the penalty of —— pounds, for the true performance of all and every the matters and things aforesaid, *As witness, &c.*

Witness,

For letting a ready furnished Lodging.

MEMORANDUM made this ——— day of ——— 1775, between *H. B.* of the parish of ———, in the county of ———, grocer, and *C. D.* of, *&c.* gent. as follows:

FIRST the said *H. B.* agrees to let unto the said *C. D.* a room up two pair of stairs forwards in his house situate in ——— *street*, in the parish and county aforesaid, ready furnished; together with the use of his maid-servant, in common with other lodgers, at such hours and times when he himself can spare her, *And also* the use of a cellar for coals and beer, at and after the rate of —— pounds a year, payable quarterly, *And* it is further agreed, that if either party shall quit or leave the said premises, he or they respectively are to give or take a quarter's warning.

The said *C. D.* agrees to take the said room of the said *H. B.* at the rate or price, and payable as aforesaid, *And also* to find or provide for himself all manner of linen, and china-ware, whatsoever, that he shall have occasion to make use of therein. And that if he shall damage or break any part of the furniture of the said *H. B.* that he will amend, make good, or pay her for the repairing the same again. *As witness, &c.*

Witness,

Note: *The foregoing agreements if not complied with, by either party may be established in a court of equity; or an action upon the case will lie to recover damages for non-performance of such agreement.*

The FORMS of LEASES and other USEFUL PRECEDENTS.

A Lease of an House for seven Years, with the usual Covenants.

THIS INDENTURE made the —— day of ——, in the —— year of the reign of our Sovereign Lord *George* the Third, by the Grace of God of *Great Britain*,

Britain, *France* and *Ireland* King, Defender of the Faith, and so forth, and in the year of our Lord ———, BETWEEN *J. S.* of, *&c.* of the one part, and *G. T.* of, *&c.* of the other part; WITNESSETH, That for and in consideration of the yearly rent, covenants, and agreements herein after contained on the part and behalf of the said *G. T.* his executors, administrators and assigns, to be paid, done, and performed. *He* the said *J. S. hath* demised, set, and to farm let, and by these presents *doth* demise, set, and to farm let unto the said *G. T.* ALL *(here insert the premises demised, with a particular description thereof)* situate, standing and being in ——— street, in the parish of ———, in the county of ———, and adjoining on the south part thereof to the premises lately in the tenure or occupation of *H. T. together* with all cellars, sollars, chambers, rooms, yards, gardens, lights, easements, ways, passages, waters, water-courses, profits, commodities, and appurtenances whatsoever, to the said messuage or tenement, and premises belonging or in any-wise appertaining. TO HAVE AND TO HOLD the said messuage or tenement, and premises, herein before-mentioned, or intended to be hereby demised, with their and every of their appurtenances unto the said *G. T.* his executors, administrators and assigns, from the feast day of *the Nativity of St. John the Baptist*, now next ensuing the date of these presents, for and during, and unto the full end and term of *seven years* from thence next ensuing, and fully to be compleat and ended. YIELDING AND PAYING therefore yearly, and every year during the said term of *seven years* unto the said *J. S.* his executors, administrators, and assigns, the yearly rent or sum of ——— pounds, of lawful money of *Great Britain*, at the four most usual feast days, or times of payment of rent in the year; (that is to say) *the Feast Day of St. Michael the Archangel, the Birth of our Lord Christ, the Annunciation of the Blessed Virgin Mary, and the Nativity of St. John the Baptist*, by even and equal portions, the first payment thereof to begin and be made on *the Feast Day of St. Michael the Archangel* now next ensuing. AND the said *G. T.* for himself, his executors, administrators and assigns, *doth* covenant, promise and agree, to and with the said *J. S.* his executors, administrators and assigns, by these presents in manner and form following; (that is to say) That he the said *G. T.* his executors, administrators

The demise.

Premises.

Habendum.

Reddendum.

Covenant to pay the yearly rent,

ſtrators and aſſigns, or ſome or one of them ſhall and will yearly, and every year during the ſaid term of *ſeven years*, hereby demiſed, well and truly pay, or cauſe to be paid unto the ſaid *J. S.* his executors, adminiſtrators or aſſigns, the ſaid yearly rent or ſum of —— pounds, hereby reſerved in the manner and proportions, and on the days and times above limited and appointed for payment thereof, according to the true intent and meaning of theſe preſents. AND ALSO ſhall and will at his, their, or ſome or one of their own proper coſts and charges from time to time, and at all times hereafter during the ſaid term hereby granted, when, where, and as often as need or occaſion ſhall be, or require, well and ſufficiently repair, ſupport, uphold, ſuſtain, maintain, pave, purge, empty, cleanſe, ſcour, glaze, amend, and keep the ſaid meſſuage or tenement, and premiſes hereby demiſed, and every part thereof with the appurtenances thereunto belonging, in, by, and with all manner of needful and neceſſary reparations, ſupportations, glazings, pavings, purgings, ſcourings, cleanſings, emptyings and amendments whatſoever; and the ſaid meſſuage or tenements with the appurtenances hereby demiſed, ſo well and ſufficiently upheld, ſuſtained, maintained, repaired, paved, purged, emptied, cleanſed, ſcoured, glazed, amended, and kept at the end, or other ſooner determination of this leaſe, which ſhall firſt happen, ſhall and will peaceably and quietly leave, ſurrender, and yield up, unto the ſaid *J. S.* his executors, adminiſtrators or aſſigns, *together* with all ſuch fixtures and things as are mentioned, or ſet forth in the ſchedule or inventory thereof hereunder written, in as good plight and condition as the ſame now are, (reaſonable uſe and wearing thereof and all inevitable accidents by fire, which may happen to burn down and conſume the premiſes, or any part thereof in the mean time only excepted.) AND FURTHER, that it ſhall and may be lawful to and for the ſaid *J. S.* his executors, adminiſtrators and aſſigns, with workmen and others, or without, twice or oftener in every year during the time hereby granted, at all convenient times in the day time to enter and come into, and upon the ſaid demiſed premiſes, and every or any part thereof there to view, ſearch, and ſee, whether the ſame be well and ſufficiently ſupported, upheld, ſuſtained, maintained, repaired, purged, emptied, cleanſed, ſcoured, glazed, and amended, as the ſame ought to be according to the true intent and meaning of

and, that the leſſee, &c. will repair the premiſes during the term,

and at the determination thereof leave the ſame in good repair, &c.

and that the leſſor may enter and view the ſame, &c.

these presents, and of all the defects, defaults, decays, lacks, and wants of reparations, and amendments, which upon every or any such view or views shall be found, to give or leave notice or warning in writing at the said demised premises, or some part thereof unto or for the said *G. T.* his executors, administrators or assigns, within the time or space of *three months* from thence next following, within which said time or space of *three months* after every such notice or warning shall be given or left as aforesaid; the said *G. T.* for himself, his executors, administrators and assigns, *doth* covenant, promise and agree, to and with the said *J. S.* his executors, administrators and assigns, by these presents from time to time during this demise, well and sufficiently to repair, and amend the same accordingly. PROVIDED *always*, that if it shall happen that the said yearly rent of —— pounds, or any part thereof shall be behind or unpaid for the space of 28 days, next over or after any of the said feast days, or times of payment, on which the same ought to be paid as aforesaid, being lawfully demanded; or if the said *G. T.* his executors, administrators or assigns, and each and every of them, do not in and by all things well and truly observe, perform, fulfill and keep all and singular the covenants, grants, articles and agreements in these presents contained, which on his and their parts and behalfs are or ought to be observed, performed, fulfilled and kept according to the true intent and meaning of these presents, that then, and from thenceforth in any such case, and at all times then after, it shall and may be lawful to and for the said *J. S.* his executors, administrators or assigns, into the said messuage or tenement and premises hereby demised, or into any part thereof in the name of the whole, wholly to re-enter, and the same to have again, repossess and enjoy as in his and their first and former estate, and the said *G. T.* his executors, administrators and assigns, and all other the occupiers of the said premises thereout, and from thenceforth utterly to expel, put out, and amove this indenture or any thing herein contained to the contrary thereof in any-wise notwithstanding. AND LASTLY, the said *J. S.* for himself, his executors, administrators and assigns, *doth* covenant, promise and agree, to and with the said *G. T.* his executors, administrators and assigns by these presents that he the said *G. T.* his executors, administrators and assigns, paying the said yearly rent herein before reserved at the place, and on the

Cause of re-entry for non-payment of rent or non-performance of the covenants.

Covenant for quiet enjoyment.

the several feast days and times before limited, and appointed for payment thereof, and observing, performing, paying, fulfilling and keeping, all and singular the payments, covenants, grants, articles, provisoes, conditions and agreements, in these presents contained, which on his, and their parts and behalfs, are or ought to be observed, performed, fulfilled and kept according to the true intent and meaning of these presents, shall and lawfully may, peaceably and quietly have, hold, occupy, possess and enjoy the said demised premises, with their and every of their appurtenances during the said term of —— years hereby granted, without the lawful let, suit, trouble, molestation, denial or eviction, of or by the said *J. S.* his executors, administrators or assigns, or any of them, or of, or by any other person, or persons whatsoever, lawfully having, or claiming to have, any right, title, or interest, in or to the said demised premises with the appurtenances, or in, or to any part or parcel thereof, by, from, or under the said *J. S.* his executors, administrators or assigns, or any of them, or by, or thro' his, their, or any of their means, consens, or procurement, *In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.*

When it is a running Term, this Proviso must be added before the words, In witness.

And lastly, it is hereby declared and agreed by, and between the said parties hereto, and their presents are upon this express condition nevertheless, that in case the said *G. T.* his executors, administrators or assigns, shall be minded or desirous to quit, or leave the said hereby demised premises, at the end or expiration of the first —— years, of the said term of —— years hereby demised, and shall and do give notice in writing under his, their, or any of their hands, of such, his, their, or any of their intention and desire, to or for the said *J. S.* his executors, administrators or assigns, at his or their dwelling-house, or last place of abode, *six calendar months* before the end or expiration of the first —— years, of the said term of —— years hereby demised, that then and in such case, it shall and may be lawful to and for the said *G. T.* his executors, administrators and assigns, and every of them to quit and leave the said

hereby demised premises, at the end of the said first ——— years, of the said term hereby demised, according to such notice so to be given or left as aforesaid; he or they first paying all rent then due and in arrear, and leaving the premises in repair, pursuant to the covenants aforesaid. AND in case the said *J. S.* his executors, administrators or assigns, shall likewise be minded and desirous to take the said premises into his or their own hands, at the expiration of the said first——— years, and of such his, their, or any of their intention or desire, shall give or leave notice in writing at the said premises, to or for the said *G. T.* his executors, administrators or assigns, *six months* before the expiration of the said first——— years, that then and in such case the said *J. S.* his executors, administrators or assigns, shall be at liberty to enter upon and take possession of the said premises, at the expiration of the said first ——— years, of the term hereby demised, according to such notice so to be given or left as aforesaid, any thing herein before contained to the contrary in any wise notwithstanding.

Note: *This provisoe is mutual, which must be varied according to the nature of the agreement between the parties.*

A Lease of a Farm, by Husband and Wife, of the Wife's Lands, with the usual Covenants respecting Husbandry.

THIS INDENTURE made the ——— day of ——— in the ——— year of the reign of our Sovereign Lord *George* the Third, by the Grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, *&c.* and in the year of our Lord———, BETWEEN *T. C.* of, *&c.* Esq; and *M.* his wife (which said *M.* is the only daughter and heir at law of *J. K.* Esq; her late father deceased) of the one part, and *T. M.* of, *&c.* yeoman, of the other part, WITNESSETH, That for and in consideration of the rents, covenants and agreement, herein and hereby mentioned and reserved, on the part and behalf of the said *T. M.* his executors, administrators and assigns, to be observed, paid, done and performed, *They* the said *T. C.* and *M.* his wife *have* demised, leased and to farm let, and by these presents *do* demise, lease and to farm let unto the said

The demise.

T.

T. M. his executors, administrators and assigns, ALL that messuage, tenement, or farm-house commonly called or known by the name of ———, with all houses, edifices, buildings, barns, stables, orchards, yards, gardens, backsides, closes, lands, meadows, pastures, woodgrounds, ways, passages, commodities and appurtenances whatsoever, thereunto belonging and appertaining, containing by estimation ——— acres more or less, situate, lying and being in the several parishes of ———, and ——— in the said county of ———, and which now, and for some time last past, have been in the tenure or occupation of the said *T. M. except* and always reserved out of this present demise unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* ALL, and all manner of timber, and timber like trees, bodies of pollards and other trees, young storeyers of oak, ash, aspe, elm and beech likely to make timber of pollards, and all wariors now standing, growing or being, or which during the term hereby demised shall be standing, growing, or being in, upon, or about the above demised premises, or any part thereof, *with* free liberty of ingress, egress and regress, to and for the said *T. C.* and *M.* his wife, and the heirs, and assigns of the said *M.* with servants, horses, carts and carriages, to fell, cut down, cart, and carry away the same at such times as the underwood shall be felled, where such timber shall stand, and not doing any wilful hurt, spoil, or damage to the corn, grain or grass, of the said *T. M.* his executors, administrators or assigns, then growing upon the premises aforesaid. TO HAVE AND TO HOLD the said messuage and premises above-mentioned, to be hereby demised with the appurtenances (*except* as before *excepted*) unto the said *T. M.* his executors, administrators and assigns, from the *feast day of St. Michael* the *Archangel* next preceding the date of these presents for and during, and unto the full end and term of ——years from thence next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefore yearly and every year during the said term, unto the said *T. C.* and *M.* his wife, and the heirs, and assigns of the said *M.* the yearly rent or sum of ——pounds, *of lawful money of Great Britain*, at the two most usual feasts or days of payment of rent in the year; (that is to say) *the feast of the Annunciation of the Blessed Virgin Mary, and St. Michael the Archangel*, by even and equal portions. AND ALSO YIELD-

Premises.

Except all timber, &c.

Habendum.

Reddendum.

YIELING AND PAYING unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* for every acre of the demised premises that are and have been used for meadow, pasture, and hedge-greens; *And also all* that little pightle in ———, which he the said *T. M.* his executors, administrators or assigns, or any of them shall plough, break up, or convert into tillage the yearly rent of ———, at or upon the feast-days and times above-mentioned, and so after that rate for every greater or lesser quantity thereof than one acre over and above the yearly rent hereby before reserved. AND the said *T. M.* for himself, his heirs, executors, administrators and for every of them *doth* covenant, promise and agree to and with the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* in manner following; (that is to say) That he the said *T. M.* his executors, administrators or assigns, or some or one of them shall and will, well and truly pay or cause to be paid unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* the yearly rent hereby before reserved at the days and times and by the proportions above-mentioned and appointed for payment thereof, according to the true intent and meaning of these presents; AND that he the said *T. M.* his executors, administrators and assigns, and every of them shall and will, at their own proper costs and charges during the said term hereby demised, repair, uphold, pale, support, amend, maintain and keep the messuage, barns, stables and out-houses, edifices and buildings above demised; *And also* hedge, ditch, scour, cleanse, and in good repair keep all and singular the hedges, ditches, gates, stiles, fences and quicksets; and preserve all young storeyers of oak, ash, aspe, beech and elm likely to become timber, and preserve the fruit-trees growing in the orchards, and other the demised premises from the hurt and spoil of cattle, or any other wilful or negligent spoil, and if any of the said trees die, to plant new ones in the room and instead thereof. And the said messuage, barns, stables, edifices and buildings so as aforesaid repaired, upheld, paled, raised, supported, amended, maintained and kept, and the hedges, ditches, gates, stiles, storeyers, fruit-trees and fences so hedged, ditched, fenced, scoured, cleansed, and the quicksets preserved in good repair, shall and will at the end and expiration or other sooner determination of this present lease, peaceably and quietly leave, surrender and yield

Covenant to pay the yearly rent;

and that the lessee, &c. will repair, &c. &c.

and at the end thereof leave the same in good repair, &c.

yield up the same, and all and every of them unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* AND that he the said *T. M.* his executors, administrators and assigns, and every of them shall, during the said term lay all the corn and hay growing in and upon the said premises into the barns, and spend the same upon the premises; and shall not employ, sell, or carry away, or suffer to be sold or carried off or from the said demised premises to be elsewhere employed, any straw, stover, soil or dung whatsoever, which shall arise or be made thereon, nor spend nor waste the straw and stover upon any pretence whatsoever, otherwise than to make dung thereof, and all the mud and dung which they shall make in the highways thereto adjoining, shall lay or leave the same to or upon the said premises, there to be spent and not elsewhere (*except* all such hay as shall be growing upon the premises, in the last year of the term hereby demised, when it shall and may be lawful to and for the said *T. M.* his executors, administrators and assigns, if they leave the said premises to carry off and spend it elsewhere). AND FURTHER that he the said *T. M.* his executors, administrators and assigns shall not, nor will at any time during the said term cross crop, or double crop any part of the said premises, but according to the course of husbandry in the country where the premises do lie, but shall keep the usual and ordinary seasons for tilling thereof (that is to say) The *first* year *wheat*, *rye*, or *barley*, the *second* year *Lent corn*; and shall not sow any barley in any one year of the said term, unless it be upon a summer's fallow: AND shall and will during the term hereby demised, permit and suffer *thirty acres* more of the arable land hereby demised to lie in pasture, and that he the said *T. M.* his executor, administrators or assigns shall leave *fifty acres* of the said demised premises for fallow in the last year of the term hereby demised, which it shall and may be lawful to and for the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* to enter on, at the *feast of the Annunciation of the Blessed Virgin Mary* next before the end of the said term hereby demised, to fix, dress and manure the same; and to take all such dung as shall be left in or about the yards, to lay on such fallow, and to take and have stable-room for horses, and lodging-room for servants for doing thereof. AND that he the said *T. M.* his executors, administrators, or assigns, shall not, nor will cut, lop, or top, or make

and shall lay the corn and hay in the barns, &c. and spend the stover on the premises,

and shall not double crop, &c. but till the same according to the course of the country, &c.

make any hedges, but when the fields whereto they belong, are sowed with *winter corn*, and that at seasonable times in the year, and shall not, nor will make up any of the hedges, fell or cut the underwood, nor lop nor top the pollards of or belonging to the said premises, or any part thereof under ——— years growth. AND the said *T. C.* for himself, and for the said *M* his wife, and her heirs, executors, and administrators, *doth* by these presents covenant, promise, and agree, to and with the said *T. M.* his executors, administrators, and assigns, in manner following (that is to say) that for as much as the premises aforesaid are copyhold, and cannot be leased for any longer term than for —— years; and at the end of this demise he the said *T. C.* and *M.* his wife, or one of them (the covenants of the said lease being performed by the lessee, his executors, and administrators) shall and will, at the request, half cost and charges, of the said *T. M.* his executors, or administrators, make, grant, seal, and execute the like lease, with this present lease for ——*years* longer; and at the end of——*years* upon the request as aforesaid, the like lease for——*years* longer, and so for ——— *years* to ——— *years*, for and during the term of —— years. AND the said *T. C.* for himself, and for the said *M.* his wife and her heirs, executors, administrators, and assigns and for every of them *doth* by these presents further covenant, promise and agree to and with the said *T. M.* his executors, administrators and assigns, that they the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* shall and will from time to time, and at all times during this present demise on reasonable request to him, her, or them made by the said *T. M.* his executors, administrators, or assigns, or any of them, and at seasonable times in the year, assign, appoint, and allow unto the said *T. M.* his executors, administrators, or assigns, brick and tile at the nearest kiln to the said messuage, and sufficient rough timber on the premises hereby demised or elsewhere, within *two miles* of the said messuage, for all manner of reparations of the said premises hereby demised. AND that the said *T. M.* his executors, administrators, and assigns, shall and may have and enjoy the use of the yards and barns belonging to the said premises, stable-room for his horses, and house-room for himself and servants, for the threshing and spending of the last year's crop, growing and arising upon the premises hereby demised

The premises being copyhold, the lessors covenant to make a further lease to the lessee.

Covenant to allow to the lessee bricks, tiles, and timber for repairs, &c.

demised until the —— day of —— next, after the end of this demise; and that it shall and may be lawful to and for the said *T. M.* his executors, administrators and assigns, for and under the several rents hereby reserved, and the covenants which on his and their parts are and ought to be paid, performed, and kept, peaceably and quietly to have, hold and enjoy the said messuage and premises aforesaid, *(except* as before *excepted)* during the term hereby demised, without the lawful let, suit, trouble, or interruption of the said *T. C.* and *M.* his wife, or the heirs, or assigns of the said *M.* or any of them. PROVIDED ALWAYS, and on this consideration *nevertheless*, that if it shall happen the said yearly rent of —— pounds, or any part thereof shall be behind or unpaid by the space of —— *days* next, over or after either of the said feasts, or days of payment aforesaid, in the several years aforesaid, in which the said several sums ought to be paid as aforesaid. Or if the said *T. M.* his executors, administrators, or assigns, or any of them do and shall assign, or make over this present indenture of lease of the premises hereby demised, or any part thereof, for any term or time whatsoever, without the licence and consent of the said *T. C.* and *M.* his wife, or the heirs, or assigns of the said *M.* first had and obtained in writing under his, her and their hands and seals for that purpose; that then, and from thenceforth it shall and may be lawful to and for the said *T. C.* and *M.* his wife, and the heirs and assigns, of the said *M.* into the said demised premises, or any part thereof in the name of the whole wholly to re-enter, and the same to have again, retain, repossess, and enjoy as in his, her and their first and former estate and estates; and the said *T. M.* his executors, administrators, and assigns, and all other occupiers thereof from thenceforth utterly to expel, and put out, any thing herein contained to the contrary thereof, in any-wise notwithstanding. *In witness, &c.*

and for quiet enjoyment.

Clause of re-entry for non-payment of rent, or if the lessee assigns without licence.

Sealed and delivered, &c.

Note, *The foregoing lease must be altered according to the agreement between the landlord and farmer, and according to the nature and custom of husbandry in the county where the land lies.*

A Deed,

A Deed, Poll, or Indemnity given to a Person on assigning a Lease to another, to protect him against the Covenants of such Lease.

TO ALL TO WHOM these presents shall come, *H. T.* of, *&c.* Esq; *sends greeting*, WHEREAS by indenture of lease dated the —— day of —— last, and made between *E. G.* of, *&c.* widow of the one part, and *T. C.* of, *&c.* victualler of the other part, for the considerations therein mentioned, the said *E. G.* DID demise, lease, grant, and to farm let unto the said *T. C.* ALL those two messuages or tenements, (formerly three messuages or tenements) yards and passage thereunto belonging, with their and every of their appurtenances, situate, lying and being in ——, in the said parish of ——, as therein mentioned, and then and now in the possession of the said *T. C.* TO HOLD to the said *T. C.* his executors, administrators and assigns, from the feast day of *the Annunciation of the Blessed Virgin Mary* then last past, for and during, and unto the full end and term of —— years, from thence next ensuing, and fully to be compleat and ended; *together* with all such goods and things as were mentioned and expressed in the schedule thereunto written, AT and under the rent of a pepper corn, payable on the feast day of *the Annunciation of the Blessed Virgin Mary* last past for the *first* year of the said term thereby demised, and the yearly rent of —— pounds, during the residue and remainder of the said term thereby demised, payable quarterly, by even and equal portions, the first payment thereof to begin and be made on the feast day of *St. John the Baptist* now next ensuing. In which said lease *(amongst other covenants)* was contained a covenant, that the said *T. C.* his executors, administrators, and assigns, should before the feast of *the Annunciation of the Blessed Virgin Mary* last past, well and truly pay, lay out and expend the sum of —— pounds, of lawful money of *Great Britain*, in and upon the necessary and substantial repairs of the messuages or tenements, and premises thereby demised. AND WHEREAS the said *T. C.* has since the date of the said lease, in pursuance and part performance of the said covenants accordingly paid, laid out, and expended the sum of —— pounds of lawful money of *Great Britain*, in and upon

upon the necessary and substantial repairs of the said messuages or tenements, and premises, as appears by the several workmens bills and receipts thereupon given. AND WHEREAS the said *H. T.* has agreed to take the said messuages, or tenements, and premises, on the said feast day of *St. John the Baptist* now next ensuing, and the said *T. C.* has delivered unto the said *H. T.* the said several workmens bills and receipts thereon; And has also paid or deposited in his hands the sum of —— pounds in pursuance and in full thereof, and also paid or deposited in his hands the further sum of — pounds, for the same quarterly payment of the rent due for the said premises, on the performance of the said covenant for the repairs of the said premises, from the day of the date hereof, and likewise in pursuance of the said agreement has, on the day of the date hereof, bargained, sold and assigned over the said lease of the said premises thereby demised unto the said *H. T.* for the rest, residue and remainder yet to come and unexpired, of the said term of —— years, as in and by the said lease and assignment thereof, relation being thereunto had, may more fully and at large appear. NOW KNOW YE that I the said *H. T.* as well for the considerations aforesaid, as also in consideration of the sum of ——— pounds, of lawful money of *Great Britain*, to me in hand paid by the said *T. C.* at or before the sealing and delivery thereof, (the receipt whereof is hereby acknowledged) *do* hereby for myself, my heirs, executors, and administrators, covenant, promise, and agree, to and with the said *T. C.* his executors, and administrators, that I the said *H. T.* my executors, and administrators, shall and will from time to time and at all times hereafter, save, defend and keep harmless and indemnify him the said *T. C.* his heirs, executors and administrators and his and their lands and tenements, goods and chattels, of, from and against all and every the covenants, clauses, provisoes, conditions and agreements whatsoever mentioned, expressed, reserved and contained in the said lease, on the tenants or lessees part and behalf thereof, to be paid, kept, done and performed. And also of and from, all and all manner of action and actions, suit and suits whatsoever, brought or to be brought, commenced, or prosecuted, against the said *T. C.* his executors or administrators, for, on account, or concerning the said lease or the said premises thereby demised, or otherwise howsoever relating to the same. IN WITNESS

NESS whereof I the ſaid *H. T.* have hereunto ſet my hand and ſeal the —— day of ———, in the year of our Lord ———.

Sealed and *delivered* (being firſt duly ſtamped) in the preſence of us. }

An abſolute Aſſignment of a Leaſe, together with the Policies of Inſurance inſured thereon, by the Adminiſtratrix of the Leſſee.

THIS INDENTURE made the —— day of ——, in the ——— year of the reign of our Sovereign Lord *George* the Third, by the Grace of God of *Great Britain*, *France*, and *Ireland* King, Defender of the Faith and ſo forth, and in the year of our Lord ——— BETWEEN *C. H.* of the pariſh of ———, in the city of ———, widow and adminiſtr trix of *E. H.* of the ſame pariſh and city, carpenter, her late huſband, deceaſed of the one part, and *C. D.* of ———, in the county of ———, of the other part. WHEREAS by indenture of leaſe bearing date the —— day of ———, which was in the year of our Lord ———, and made between *S. D.* of ——, in the county aforeſaid —— of the one part, and *E. H.* of ———, in the pariſh of ———, citizen and carpenter of the other part; he the ſaid *S. D.* for the conſiderations therein mentioned, did demiſe, and to farm let unto the ſaid *E. H.* ALL thoſe two meſſuages or tenements and premiſes, ſituate, lying and being on the *ſouth ſide* of ———, in the county of ———, which ſaid houſes are abutting on a paſſage leading from ———, part of the ſaid houſes being built againſt the ſaid paſſage, and then late in the ſeveral tenures or occupations of *I. S.* and *B. G.* widow, as the ſaid premiſes are particularly deſcribed in the map, or ground plot thereunto annexed together with all vaults, lights, eaſements, ways, paſſages, waters, water-courſes, and appurtenances, which of right belong to the ſaid premiſes, and except any door-ways, or water-courſes going into ———. TO HOLD the ſame premiſes unto the ſaid *E. H.* his executors, adminiſtrators, and aſſigns, from the feaſt day of *the Birth of our Lord Chriſt* then laſt paſt, for and during and unto the full end and term of ——— years from thence next

Recital of the leaſe.

next ensuing, and fully to be compleat and ended, at and under the yearly rent of ——— pounds of lawful money of *Great Britain*, payable quarterly, free from all taxes, duties, rates, and assessments whatsoever. AND WHEREAS the said *E. H.* lately departed this life intestate, and letters of administration of the goods and chattels, rights and credits, of the said *E. H.* were granted unto the said *C. H.* party hereto, as by reference to the said recited indenture of lease, and letters of administration being had, will more fully appear. AND WHEREAS the said *C. D.* has contracted and agreed, to and with the said *C. H.* for the purchase of the said herein before-mentioned premises, for the remainder of the said term of ——— years, which is now to come therein and unexpired, at or for the price or sum of ——— pounds. NOW THIS INDENTURE WITNESSETH, that for and in consideration of the said sum of ——— pounds of lawful money of *Great Britain*, to the said *C. H.* in hand well and truly paid by the said *C. D.* at or before the sealing and delivery of these presents, the receipt whereof the said *C. H.* doth hereby acknowledge, and thereof and of and from every part thereof doth acquit, release, and discharge the said *C. D.* his heirs, executors and administrators, for ever by these presents: she the said *C. H. hath* granted, bargained, sold, assigned and set over, and by these presents *doth* fully and absolutely grant, bargain, sell, assign and set over unto the said *C. D.* ALL those two messuages or tenements, then late in the several tenures or occupations of *I. S.* and *B. G.* widow: *And also all* that brick messuage or tenement lying behind one of the said messuages or tenements now or late in the tenure or occupation of *I. S.* which said last mentioned messuage or tenement was erected and built by the said *E. H.* on the said premises, since the commencement of the herein before recited indenture of demise; and all and singular other the premises with their and every of their appurtenances thereunto belonging or appertaining or therewith usually held, occupied, or enjoyed, together with the said recited indenture of lease: And all the estate, right, title and interest, both legal and equitable of her the said *C. H.* of in and to the same, by virtue of the same indenture of lease, TO HAVE AND TO HOLD the said three several messuages or tenements and other the premises with their and every of their appurtenances unto the said *C. D.* his executors, administrators and assigns, from *Lady-day* next

Assignment thereof

for the remainder of the term.

next ensuing the day of the date of these presents, for and during all the rest, residue and remainder of the said term of ——— years, in and by the said recited indenture of lease granted, which is now to come and unexpired, *subject* only to the rent and covenants therein mentioned, reserved and contained from and after *Lady-day* ———, on the tenant or lessees part and behalf to be paid, kept, done, and performed; AND the said *C. H. doth* for herself, her heirs, executors and administrators, covenant, promise and agree to and with the said *C. D.* his executors, administrators and assigns, by these presents in manner following (that is to say) that the said recited indenture of lease now at the time of the sealing and delivery hereof, is a good and valid lease in the law of the premises thereby demised, and now is, and stands in full force and virtue, not forfeited, surrendered, or otherwise incumbered, or made void, or voidable by her or the said *E. H.* deceased. AND ALSO that she the said *C. H.* now at the time of the sealing and delivery hereof, hath in herself, good right, full power and lawful and absolute authority, to assign and transfer, all and singular the said premises with their appurtenances unto the said *C. D.* his executors, administrators and assigns, in manner and form aforesaid, according to the true intent and meaning of these presents. AND ALSO that it shall and may be lawful to and for the said *C. D.* his executors, administrators and assigns, from henceforth peaceably and quietly to have, hold, occupy, possess and enjoy, all and singular the said premises, with their and every of their appurtenances from *Lady-day* ———, and to receive the rents, issues and profits thereof, to his and their own use and benefit, for and during all the rest, residue and remainder, which is now to come and unexpired of and in the said term of ——— years, by the said recited indenture of lease granted without any let, suit, or interruption, of or by the said *C. H.* or any other person or persons, claiming or to claim, by, from or under her, or the said *E. H.* deceased; and that the said hereby assigned premises now are and be free and clear of and from all incumbrances whatsoever had, made, done, or suffered by the said *C. H.* or the said *E. H.* deceased, or any other person or persons whatsoever claiming, or to claim by, from or under her or him, the said yearly rent reserved by the said recited indenture of lease, and the covenants therein contained, which on the tenants or lessees

Covenant that the lease is in force, not void or voidable;

and that the assignor hath power to assign,

and for quiet enjoyment to the assignee;

and that the premises are free from incumbrances,

lessees part and behalf shall from *Lady-day* aforesaid grow due, and ought to be paid, kept, done and performed: (*only excepted*) AND FURTHER that she the said *C. H.* and all and every other person and persons claiming or to claim any estate or interest of in or to the said premises, or any part thereof by, from or under her or the said *E. H.* deceased; shall and will at any time hereafter upon the request and at the cost and charges of the said *C. D.* his executors, administrators or assigns, make, do, and execute all and every such further and other lawful and reasonable acts, deeds, assignments, and assurances in the law whatsoever, for the better strengthening and confirming the assignment hereby made of all and singular the said premises, with their appurtenances, for and during all the remainder which shall be then to come and unexpired of the said term of ——— years, unto the said *C. D.* his executors, administrators and assigns, as by him or them or his or their counsel learned in the law, shall be reasonably devised, or advised, and required. AND the said *C. D. doth* for himself, his heirs, executors or administrators, covenant, promise, and agree to and with the said *C. H.* her executors and administrators by these presents, that he the said *C. D.* his executors, administrators or assigns, shall and will from time to time and at all times hereafter, during the remainder now to come and unexpired, of the said term of——years, in and by the said recited indenture of lease granted, well and truly pay, or cause to be paid, the said yearly rent by the said indenture of lease reserved, and perform all and singular the covenants and agreements therein contained, and which from and after *Lady-day* last past, on the tenants or lessees part and behalf are or ought to be paid, kept, done, and performed, and of and from all actions, suits, recoveries, judgments, executions, costs, charges, damages, and expences whatsoever, that shall or may be commenced, obtained, recovered, or prosecuted against the said *C. H.* her executors or administrators, for or on account of the non-payment of the rent, or non-performance of the said covenants and agreements, or any of them, from and after *Lady-day* aforesaid, shall and will, well and sufficiently, save harmless and keep indemnified the said *C. H.* her heirs, executors, or administrators, their and each and every of their lands or tenements, goods and chattels. NOW THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, she

and for further assurances.

Covenant by the assignee to pay the rent, and to save the assignor harmless.

Assignment of policies of insurance.

she the said *C. H. hath* bargained, sold, assigned, and set over, and by these presents *doth* bargain, sell, assign and set over unto the said *C. D.* his executors, administrators and assigns, *Two* several instruments or policies of insurance, by which the herein before recited premises are insured from fire in the *Hand-in-Hand* insurance-office, bearing date respectively the——day of——, in the year——, and the—day of——, in the year——, and which said two policies are numbered as follows: No. 72504 and No. 47678; and all and every sum and sums of money thereby insured, and which may at any time or times hereafter become due, or payable by virtue thereof, together with all the right, title, property, benefit, and interest of her the said *C. H.* of in and to the said two several instruments or policies of insurance, with all powers and remedies for the recovery thereof. *In witness, &c.*

Sealed and *delivered*) *&c.*

An Assignment of Policies of Insurance by Deed-poll.

TO ALL TO WHOM these presents shall come *E. U.* of ———, in the county of ———, executor of the last will and testament of *H. I.* late of ———, in the county aforesaid, gentleman, deceased, *sends greeting*, WHEREAS by several deeds poll, or policies of insurance, numbered as follows, *viz.* No. 48888 and No. 48889, and bearing date respectively the ——— day of ———, in the year of our Lord———, and the ——— day of ———, in the year of our Lord ———, and executed by *D. C.* and others, the trustees or directors of the *Hand-in-Hand* fire-office, two several sums of ——— pounds, and ——— pounds, are thereby insured from fire from the date hereof for the two several terms of——— years, and ——— years, by the said *E. U.* his executors, administrators and assigns, on two several timber-houses, situate on the south-side of ———, in the parish of ——— aforesaid, being the *third* and *fourth* houses westward from ———, and then, or now, or late in the several possessions of one *R. B. W. M.* of ———, in the parish of ——— aforesaid, as by the said two several deeds poll, or policies of insurance, reference being unto them respectively had, may more fully appear. NOW

KNOW

KNOW YE, that the said *E. U.* for and in consideration of the sum of ——— pounds, to him in hand paid by the said *W. M.* (the receipt whereof is hereby acknowledged) *hath* bargained, sold, assigned, and set over, and by these presents *doth* absolutely bargain, sell, assign, and set over, unto the said *W. M.* his executors, administrators and assigns, the aforesaid two several recited deeds poll, or policies of insurance, and the monies that shall or may become due thereon, and all benefit and advantage thereof, and all the said *E. U*'s right, title, and interest, of in and to the same respectively; AND the said *E. U. doth* also hereby authorize, and impower the said *W. M.* his executors, administrators, and assigns, in his or their own name or names, but to and for his and their own proper use, or for and in the name of the said *E. U.* his executors or administrators, to receive of and from the said trustees or directors, or their successors, the said monies that shall or may become due on the aforesaid two several recited deeds poll, or policies of insurance, and on non-payment thereof, or any part thereof to sue for, recover and receive the same, and on payment thereof or any part thereof, to give receipts, acquittances, or other discharges for the same; and all and whatsoever the said *W. M.* his executors, administrators and assigns, shall lawfully do, or cause to be done in and about the premises aforesaid; the said *E. U. doth* hereby ratify, confirm, and allow, as fully and effectually as if he himself was personally present, and did the same, hereby granting unto him and them his full and whole power and authority in and about the aforesaid premises. IN WITNESS whereof the said *E. U.* hath hereunto set his hand and seal the —— day of ——, in the year of our Lord ——

Sealed and *delivered*, (being first duly stamped) in the presence of }

The Form of a Lease in Ejectment, where the Premises are uninhabited, to recover Possession.

THIS INDENTURE made the —— day of ——, in the ——— year of the reign of our Sovereign Lord *George* the Third, by the Grace of God of *Great Britain*, *France*, and *Ireland* King, Defender of the Faith,

and so forth, and in the year of our Lord ———, BETWEEN *D. E.* of, *&c.* Esq; of the one part, and *F. G.* of, *&c.* yeoman, of the other part, WITNESSETH, That he the said *D. E.* for divers good causes and considerations him thereunto moving, *hath* demised, granted, and to farm letten, and by these presents *doth* demise, grant and to farm-let, unto the said *F. G.* ALL that messuage or tenement, commonly called or known by the name and sign of the ——, situate, lying and being in ——, in the parish of ——, in the county of ——, and late in the possession or occupation of one *H. I.* TO HAVE AND TO HOLD the said messuage or tenement, and premises, with the appurtenances, from the date of these presents, for, during, and unto the full end and term of *five years* from thence next ensuing, and fully to be complete and ended. PROVIDED ALWAYS, and on this condition nevertheless that if the said *D. E.* his executors or administrators, shall at any time after the —— day of this present month of ——, tender the said *F. G.* his executors or administrators *one shilling*, then this present indenture and every thing herein contained shall be void, and of none effect, any thing herein contained to the contrary in any wise notwithstanding. *In witness* whereof the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Sealed and *delivered*, (being first duly stamped) in the presence of }

Form of an Absolute Bill of Sale.

THIS INDENTURE, made the —— day of ——, in the 15th year of the reign of our Sovereign Lord *George* the Third, by the Grace of God of *Great Britain*, *France* and *Ireland*, King, Defender of the Faith, *&c.* and in the year of our Lord 1775, BETWEEN *S. P.* of, *&c.* victualler, on the one part, and *J. B.* of, *&c.* brewer, of the other part, WITNESSETH, that the said *S. P.* for and in consideration of the sum of ——— pounds, of lawful money of *Great Britain*, to him in hand, well and truly paid by the said *J. B.* the receipt whereof is hereby acknowledged; *hath* given, granted, bargained, and sold; and by these presents *doth* give

give, grant, bargain, and sell unto the said, *J. B.* ALL and every the goods, chattels, houshold goods and furniture, bedding, vessels, liquors, and other things, whatsoever of him the said *S. P.* and which are specified and contained in the schedule hereunder written; and all the full and whole right, property, interest, claim, and demand whatsoever of him the said *S. P.* either in law or equity, of in and to the same, and every part and parcel thereof TO HAVE AND TO HOLD, the same and every part and parcel thereof to him the said *J. B.* his executors, administrators and assigns, *To the sole and only proper use*, advantage, benefit, and behoof of him the said *J. B.* his executors, administrators and assigns, absolutely for ever, without any account whatsoever to be made, given or rendered for the same, or any part thereof to him the said *S. P.* his executors, administrators or assigns, or any of them; *And* the said *S. P.* all and singular the said goods, chattels, and premises above bargained and sold, or mentioned or intended so to be, and every part and parcel thereof to him the said *J. B.* his executors, administrators and assigns, against him the said *S. P.* his executors and administrators, and against all other person and persons whatsoever, shall and will warrant, and for ever defend by these presents; *And* that these presents may be the more effectual, and the said *J. B.* his executors, administrators and assigns, may the better have and enjoy the benefit and advantage of the bargain and sale hereby made, he the said *S. P. hath* in the presence of the witnesses who have subscribed their names to the due execution of these presents, put the said *J. B.* in full possession of the said several goods, chattels and things above granted, bargained and sold, and mentioned and contained in the schedule hereunder written, and every part or parcel thereof, by delivering unto the said *J. B.* a *half-pint pewter-pot*, parcel of the goods and chattels, in the name of the possession thereof, and of all other the goods, chattels and things whatsoever in the said underwritten schedule contained, and herein before granted, bargained and sold, or mentioned or intended so to be to him the said *J. B.* IN WITNESS whereof the said *S. P.* hath hereunto set his hand and seal the day and year first above-written.

Sealed and *delivered* (being first duly stamped) in the presence of }

The schedule referred to by the deed above.

Note: *If it is only a conditional bill of sale by way of mortgage of the goods and chattels, till such time the money lent is repaid with interest, the following provisoe of redemption must be inserted therein immediately after the bargainor's warranty, to defend the bargainee in possession of the goods sold or mortgaged, beginning after the words* (for ever defend by these presents.)

PROVIDED ALWAYS, that it is hereby agreed between the said parties to these presents, that if *S. P.* his executors, administrators or assigns, do and shall, well and truly, pay or cause to be paid unto the said *J. B.* his executors, administrators or assigns the full sum of ——— pounds, with lawful interest for the same, at and after the rate of —— pounds *per cent.* on the —— day of ——— next ensuing the day of the date of these presents, for the redemption of the said hereby bargained and sold premises, then these presents, and every clause, article, condition and thing herein contained shall cease, and be utterly void, or else remain in full force and effect. IN WITNESS, *&c.*

Sealed, &c.

Note: *All the foregoing deeds must be wrote or ingrossed on a sheet or skin of paper or parchment, properly stamped according to law.*

A Tenant's Attornment to his Landlord.

BE IT KNOWN unto all men by these presents, That *whereas* WE whose hands and seals are hereunto put, DO severally hold several messuages or dwelling-houses with their appurtenances, at our respective names hereunto mentioned and particularly described, situate in ——, in the county of ——, or liberty of the same heretofore in the possession of *G. H.* Esq; lately recovered from him, by an ejectment brought in the court of ———, on the demise of *R. S.* Esq; and a writ of *habere facias possessionem* has been executed therein, by the sheriff of the said county, and possession thereof delivered by him to the use of the said *G. H.* NOW WE the said persons under named, *do* hereby severally attorn tenants, of and for the said premises in our respec-

tive

tive holding unto the said *G. H* at and under the several yearly rents, and payable at the days and times at our respective names under-mentioned; he the said *G. H.* paying or allowing thereout all leys, taxes, and repairs. AND we have this day severally paid to *H. H.* for the use of the said *G. H. one shilling* for and in the name of such attornment. *In witness*, whereof we have hereunto set our hands and seals this —— day of ——, in the year of our Lord ——.

Sealed and *delivered*, *&c.*

Note: *To this attornment must be added a rental, with the particular times when each tenant is to attorn.*

An Attornment in another Form.

MEMORANDUM, That the persons whose names are hereunder written DID the —— day of —— 1775, attorn and become tenants unto the above named *I. H.* according to the purpose of the lease within mentioned, having notice of the said grant; and for proof thereof every one of them DID give unto the said *I. H.* —— in the name of attornment.

Tenants names.

WITNESSES hereto.

This attornment is to be indorsed on the back of the lease.

Note: *Attornments must be indorsed on the deed to which they relate, or else declared in a separate deed. See more on this subject under stat. 4 & 5 An. c. 16. s. 9. & stat. 11 Geo. 2. c. 9.*

MEMORIALS.

Directions for executing the same under Stat. 7 Ann. Ch. 20.

BY *statute 7 Ann.* a memorial of all deeds and conveyances, and wills and devises in writing made after the 29th of *September*, 1709, to affect any honours, ma-

nors, lands, tenements or hereditaments in *Middlesex*, are to be registered, or shall be adjudged fraudulent, and void against any subsequent purchaser or mortgagee for valuable consideration; and no judgment, statute or recognizance (other than in the name, and upon account of his majesty) obtained after that day, to affect any honours, *&c.* in *Middlesex*, but only from the time of entering the memorial at the register's office.

Where there are more deeds than one to a perfect conveyance or security, the parcels and places where they lie need only be mentioned in one memorial, and the others to refer to that.

The act requires only the dates, persons names, additions, parcels, witnesses names, and their additions and places of abode, to be contained in the memorial, but 'tis usual to make a short recital.

These memorials are to be on vellum or parchment; some have them on a *double six-penny stamp*; others without a stamp; the register receives both; and to be signed and sealed in the common form by one of the grantors or grantees, his or their executors, administrators, guardians or trustees, attested by two witnesses; and one of the witnesses to the deed must be a witness to the memorial, who is to make oath of the due execution of both before the register, and also produce the deed, grant, or will at the same time.

The memorial, certificate and affidavit of a judgment, statute or recognizance, is written on one piece of parchment, with a *treble six-penny stamp*.

The memorials are to be left in the office, and after they are registered, the register certifies the same upon the back of the deed, which certificate is evidence in any court of record.

Upon certificates of mortgage money paid where the memorial is registered, and signed by the mortgagee, his executors, administrators or assigns, attested by two witnesses, and oath that the money is paid, and of signing the certificate, the register to make an entry thereof in the margin of the register-book against the registry of the memorial, and to file the certificate. This certificate should be upon parchment (*without a stamp*).

The act requires the office hours to be from *nine* 'till *twelve*, and from *two* 'till *five* every day, except *Sundays* and holy-days.

FORMS

FORMS of MEMORIALS.

Of a Lease for Years.

A MEMORIAL *to be registered pursuant to an Act of Parliament made for that Purpose.*

OF AN INDENTURE of lease, bearing date the —— day of ——, in the year of our Lord one thousand seven hundred and seventy-five, and made between *A. B.* of, *&c.* of the one part, and *C. D.* of, *&c.* of the other part. Whereby the said *A. B.* for the considerations therein-mentioned, *did* demise to the said *C. D.* ALL *&c.* (*here insert the premises demised as they are particularly described in the indenture of lease*). TO HOLD for the term of ——— years, to commence from ———, at the yearly rent of ———, of lawful money of *Great Britain*, *which* said indenture of lease is witnessed by *J. J.* of, *&c.* and *T. T.* of, *&c.* and is hereby required to be registered pursuant to the said act by me the said *C. D.* the lessee in the said indenture of lease. AS WITNESS, *&c.* *C. D.*

Signed, &c.

Of a Mortgage for Years.

A MEMORIAL *to be registered pursuant, &c.*

OF AN INDENTURE of mortgage dated the ——, day of ——, 1775, and made between *A. B.* of, *&c.* of the one part, and *C. D.* of, *&c.* of the other part. Whereby the said *A. B.* for and in consideration of —— pounds, demised unto the said *C. D.* *All, &c.* (*here insert the premises as particularly described in the indenture of mortgage*) TO HOLD unto the said *C. D.* for the term of —— years, SUBJECT NEVERTHELESS to a proviso that the same shall be void on payment of the sum of ——— pounds, of lawful money of *Great Britain*; together with lawful interest for the same on the —— day of ———, 1776, *which* said indenture of mortgage is witnessed by *J. J.* of, *&c.* *T. T.* of, *&c.* and

and is hereby required to be registered pursuant to the said act of parliament, by me the said *A. B.* the grantor in the said indenture of mortgage. AS WITNESS, *&c.*

Signed, &c. *A. B.*

Note: *For further precedents on this subject, see Wood's Body of Conveyancing, v. 3. p. 469.*

NOTICES *to and from Landlords and Tenants to quit* PREMISES.

A Landlord's Notice to a Tenant.

SIR,

I DO hereby give you notice to quit the house and garden you hold of me, situate at ———, in the county of ———, at the yearly rent of ——— pounds *per* year, on or before *Midsummer-day* next,
Dated the —— day of ———, 1775.

Yours, *&c.*

I. H. landlord of the said premises.

To *T. T.* the tenant thereof.

A Tenants Notice to his Landlord to quit his Premises.

SIR,

I HEREBY give you warning of quitting your house on or before *Lady-day* next, of which be pleased to take notice. Dated the —— day of ———, 1775.

From your humble servant

D. C.

To Mr. *G. M.* the landlord of the premises.

A Warning from a Landlord to his Tenant to quit Possession, in the Common Form.

I DO hereby give you notice to quit possession of *(here describe the premises particularly, whether lease, lodgings, chambers, farm or lands, &c.)* situate in the parish of ——, now in your own possession, or in the possession of ——,

(*as*

(as the case is) which you hold at will, or by virtue of an agreement or lease, *(as the case is)*. Dated the —— day of ———. Witness my hand this —— day of ———, 1775.

A. B. landlord, or *C.* agent for the said Mr. *A. B.* legally authorized.

To Mr. *J. S.* the tenant, These.

In another Form.

Mr. *J. H.*

I HEREBY give you notice to deliver up the possession to Mr. *T. K.* of the messuage or dwelling-house, with the appurtenances which you rent of me in ———, in the county of ———, on *Lady-day* next. Dated this —— day of ———, 1775.

Yours, *&c.*
D. C.

To Mr. *J. H.* the tenant, These,

A Notice to a Tenant to deliver up Possession, or on Refusal to pay double Rent.

To Mr. *F. G.*

I HEREBY demand of you, and give you notice that you are to deliver up the possession of the house with the appurtenances, in the parish of ———, in the county of ———, now in your own occupation, to Mr. *A. B.* your landlord, at *Lady-day* next ensuing the date hereof; and in default of your compliance therewith the said *A. B. doth* and will insist on your paying unto him from thenceforward, for the same, the yearly rent or sum of —— pounds, being double the former rent or value thereof, for so long time as you shall detain the key, and keep possession of the said premises over the said notice. Given under my hand this —— day of ——, in the year of our Lord ——.

N. M. agent for the said Mr. *A. B.* legally authorized.

To Mr. *F. G.* the tenant, These,

Note, *The above notice is under stat. 4th Geo. 2.*

If

If the rent was made payable half yearly, give half a year's notice.

The notice or warning to quit muſt be in writing directed to the tenant.

By the cuſtom of *London*, a tenant at will under the yearly rent of *forty ſhillings* ſhall not be turned out without a quarter's warning; and a tenant paying above *forty ſhillings* yearly is not to be turned out, unleſs half a year's warning be given. *Bacon's Abr.* 689. See before p. 3, 4.

An ABSTRACT *of the ſeveral Acts of Parliament reſpecting* LANDLORDS *and* TENANTS.

Stat. 2 *William and Mary, Stat.* 1. *Ch.* 5.

To enable a Landlord to ſell Goods taken in Diſtreſs, unleſs replevied in due Time, &c.

Sect. 2.

IT is enacted, That from and after the *firſt* day of *June* in the year of our Lord one thouſand ſix hundred and ninety, that where any goods or chattels ſhall be diſtrained for any rent reſerved and due upon any demiſe, leaſe, or contract whatſoever, and the tenant or owner of the goods ſo diſtrained on, ſhall not within *five days* next after ſuch diſtreſs taken, and notice thereof (with the cauſe of ſuch taking) left at the chief manſion-houſe, or other moſt notorious place on the premiſes charged with the rent diſtrained for, replevy the ſame, with ſufficient ſecurity to be given to the ſheriff according to law; that then and in ſuch caſe after ſuch diſtreſs made and notice as aforeſaid given, and at the expiration of the ſaid *five days*, the perſons diſtraining ſhall and may with the ſheriff or under ſheriff of the county, or with the conſtable of the hundred, pariſh or place, where ſuch diſtreſs ſhall be taken (who are hereby required to be aiding and aſſiſting therein) cauſe the goods and chattels ſo diſtrained to be appraiſed by two ſworn appraiſers (whom ſuch ſheriff, under ſheriff or conſtable, are hereby impowered to ſwear to appraiſe the ſame truly according to the beſt of their underſtanding) and after ſuch appraiſement, ſhall and may lawfully ſell the goods and chattels ſo diſtrained, for the beſt price that ſhall be gotten for the ſame, towards the

Goods diſtrained for rent may be appraiſed and ſold.

ſatisfaction

satisfaction of the rent, for which the said goods and chattels shall have been distrained, and of the charges of such distress, appraisement, and sale, leaving the overplus (if any) in the hands of the said sheriff, under-sheriff, or constable, for the owner's use.

And whereas no sheaves or cocks of corn, loose, or in the straw, or hay, in any barn or granary, or in any hovel, stack, or rick, can, by the law, be distrained on or otherwise secured for rent, whereby landlords are often times cozened and deceived by their tenants, who sell their corn, grain, and hay to strangers, and remove the same from the premises, chargeable with such rent, and thereby avoid the payment of the same. Sect. 3.

It is further enacted by the authority aforesaid, that for remedying the same practice and deceit, it shall and may from and after the *first* day of *June* be lawful to and for any person or persons having rent in arrear, and due upon any such demise, lease or contract as aforesaid, to seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack or rick, or otherwise, upon any part of the land or ground charged with such rent, and to lock up or detain the same in the place where the same shall be found, for and in the nature of a distress, until the same shall be replevied upon such security to be given as aforesaid; and in default of replevying the same as aforesaid, within the term aforesaid, to sell the same after such appraisement thereof to be made; so as nevertheless such corn, grain or hay, so distrained as aforesaid, be not removed by the person or persons distraining, to the damage of the owner thereof, out of the place where the same shall be found and seized, but be kept there (as impounded) until the same shall be replevied, or sold in default of replevying the same within the time aforesaid. Corn loose, &c. may be seised and secured, &c. and sold.

It is further enacted by the authority aforesaid, that upon *pounding* or *rescous* of goods or chattels distrained for rent, the person or persons aggrieved thereby shall in a special action upon the *case*, for the wrong thereby sustained, recover his and their treble damages and costs of suit against the offender and offenders, in any such rescous or pound-breach, any or either of them, or against the owner of the goods distrained, in case the same be afterwards found to have come to his use or possession. Sect. 4. Treble damages for pound-breach.

By

Sect. 5.

Double damages and costs against wrongful distrainer.

By this statute it is provided, That in case any such distress and sale, as aforesaid, shall be made by virtue or colour of this present act, for rent pretended to be in arrear, or due, where in truth no rent is in arrear or due to the person or persons distraining, or to him or them in whose name or names, or right, such distress shall be taken as aforesaid, that then the owner of such goods and chattels distrained and sold as aforesaid, his executors or administrators, shall and may by action of trespass, or on the case to be brought against the person or persons so distraining, any or either of them, his or their executors or administrators; recover double the value of the goods or chattels so distrained and sold, together with full costs of suit.

Stat. 8 *Ann. Ch.* 14.

To secure the Payment of a Year's Rent to the Landlord, where the Stock of the Tenant is taken in Execution, &c.

Sect. 1.

If a landlord's rent be no more than for one year he must have it before an execution can be executed.

It is enacted, That no goods upon any tenement leased, shall be taken by any execution, unless the party at whose suit the execution is sued out, shall before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for rent for the premises, *provided* the arrears do not amount to more than *one year*'s rent; and in case the arrears shall exceed *one year*'s rent, then the party at whose suit, *&c.* paying the said landlord or his bailiff *one year*'s rent, may proceed to execute his judgment; and the sheriff is required to levy and pay to the plaintiff, as well the money paid for rent, as the execution money. See 2. *Wilson*, 140, 141.

Sect. 2.

Landlord may seize goods fraudulently carried off the premises, &c.

It is further enacted, That in case any lessee for life or lives, term of years at will, or otherwise, of any messuages, lands, or tenements, upon the demise whereof any rents shall be reserved or made payable, shall, from and after the *first* day of *May*, fraudulently or clandestinely convey, or carry off from such demised premises his goods or chattels, with intent to prevent the landlord or lessor, from distraining the same for arrears of such rent so reserved as aforesaid: it shall and may be lawful for such lessor or landlord, or any person or persons by him for

for that purpose lawfully impowered, within the space of *five days* next ensuing such conveying away, or carrying off of such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found, as a distress for the said arrears of such rent; and the same to sell or otherwise dispose of in such manner, as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such demised premises, for such arrears of rent; any law, custom, or usage, to the contrary in any-wise notwithstanding.

Provided nevertheless, That nothing in this act shall extend or be construed to extend, to impower such lessor or landlord, to take or seize any goods or chattels as a distress for arrears of rent, which he sold *bona fide*, and for a valuable consideration, before such seizure made. Sect. 3. Unless sold bona fide.

It is further enacted, That it shall and may be lawful for any person or persons having rent in arrear, due upon any lease or demise for life or lives, to bring an action of *debt* for such arrears of rent, in the same manner as they might have done in case such rent were due and reserved upon a lease for years. Sect. 4. Debt lies against tenant for life.

And that all distresses to be made as aforesaid, shall be liable to such sales, and in such manner as by 2 *W. & M. stat.* 1. *ch.* 5. and the monies arising by such sales to be distributed in like manner, *&c.* Sect. 5.

And whereas, tenants *pour autre vie* (that is for the life of another person) and lessees for years or at will, frequently hold over the tenements to them demised, after the determination of such leases: and whereas after the determination of such or any other leases, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof; *it is enacted* that it shall and may be lawful for any person or persons having any rent in arrear, or due upon any lease, or life or lives, or for years, or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined. Sect. 6. Distress may be after the lease ended.

Provided, that such distress be made within the space of *six calendar months* after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears become due. Sect. 7. If it be within six months after.

Nothing in this act contained shall extend, or be construed to extend, to hinder or prejudice her majesty, her Sect. 8. This act does not extend to the crown.

her heirs or ſucceſſors in the levying, recovering or ſeizing any debts, fines, penalties or forfeitures that are or ſhall be due, payable or anſwerable to her majeſty, her heirs or ſucceſſors.

Stat. 4 *Geo.* 2. *Ch.* 28.

For puniſhing Frauds committed by Tenants, and for the more eaſy recovery of Rents, and Renewal of Leaſes.

Sect. 1. Perſons holding over lands, &c. after expiration of leaſes to pay double the yearly value.

It is enacted, That in caſe any tenant or tenants for any term for life or lives or years, or other perſon or perſons who are or ſhall come into poſſeſſion of any lands, tenements or hereditaments, by, from or under, or by any *colluſion* with ſuch tenant or tenants, ſhall wilfully hold over any lands, tenements or hereditaments, after the determination of ſuch term or terms, and after demand made and notice in writing given for delivering the poſſeſſion thereof by his or their landlords or leſſors, or the perſon or perſons to whom the remainder or reverſion of ſuch lands, tenements or hereditaments, ſhall belong, his or their agent or agents thereunto lawfully authoriſed; then and in ſuch caſe ſuch perſon or perſons ſo holding over ſhall, for and during the time he, ſhe and they, ſhall ſo hold over, or keep the perſon or perſons entitled out of poſſeſſion of the ſaid lands, tenements and hereditaments, as aforeſaid, pay to the perſon or perſons ſo kept out of poſſeſſion, their executors, adminiſtrators, or aſſigns, at the rate of double the yearly value of the lands, tenements, and hereditaments, ſo detained, for ſo long time as the ſame are detained, to be recovered in any of his majeſty's courts of record, by action of *debt*, whereunto the defendant or defendants ſhall be obliged to give ſpecial bail; againſt the recovering of which ſaid penalty there ſhall be no relief in *equity*.

Sect. 2. When half a year's rent is in arrear, &c. how and in what manner the landlord may proceed by ejectment,

It is further enacted, That in all caſes between landlord and tenant from and after the *twenty-fourth* day of *June*, one thouſand ſeven hundred and thirty-one, as often as it ſhall happen that one half year's rent ſhall be in arrear, and the landlord or leſſor, to whom the ſame is due, hath a right by law to re-enter for the non-payment thereof, ſuch landlord or leſſor, ſhall and may, without any formal demand or re-entry, ſerve a declaration

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tion in *ejectment* for the recovery of the demised premises; or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon a door of any part of the demised messuage; or in case such *ejectment* shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments, comprised in such declaration of *ejectment*, and such affixing shall be deemed legal service thereof, which service or affixing such declaration in *ejectment* shall stand in the place and stead of a demand and re-entry, and in case of judgment against the casual ejector, or non-suit for not confessing lease, entry, and ouster, it shall be made appear to the court where the said suit is depending, by *affidavit*, or be proved upon trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, counterbalancing the arrears then due, and that the lessor or lessors in *ejectment* had power to re-enter; then and in every such case the lessor or lessors in *ejectment* shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such *ejectment*, and execution to be executed thereon, without paying the rent and arrears together with full costs, and without filing any bill or bills for relief in *equity*, within *six calendar months* after such execution executed; then and in such case the said lessee or lessees, his, her, or their assignee or assignees, and all other persons claiming and deriving under the said lease, shall be barred and fore-closed from all relief or remedy in *law* or *equity*, other than by writ of error for reversal of such judgment, in case the same shall be erroneous; and the said landlord or lessor shall from henceforth hold the said demised premises discharged from such lease; and if a verdict in *ejectment* should pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, except for the defendant or defendants not confessing lease, entry and ouster; then and in every such case such defendant or defendants shall have and recover his, her, and their full costs.

and shall recover judgment.

Not to bar the right of any mortgagee.

Nothing in the above act shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do within *six calendar months* after such judgment obtained and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, or person or persons entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee or lessees are and ought to be performed.

Sect. 3.

Lessee's filing bill in equity not to have injunction against proceeding at law, &c.

It is further enacted, That in case the said lessee or lessees, his, her or their assignee or assignees, or other person or persons claiming any right, title or interest in law or equity, of, in, or to the said lease, shall, within the time aforesaid, file one or more bill or bills, for relief in any court of *equity*, such person or persons shall not have or continue any injunction against the proceedings at law on such *ejectment*, unless he, she, or they do or shall, within *forty days* next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff, in such *ejectment* bring into the court and lodge with the proper officer such sum and sums of money, as the lessor or lessors of the plaintiff in such *ejectment* shall, in his, her, or their answer swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord, or good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she, or they really, and *bona fide* without fraud, deceit, or wilful neglect, make of the demised premises from the time of his, her, or their entering into the actual possession thereof; and if what shall be so made by the lessor or lessors of the plaintiff happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors, or landlord or landlords, what the money so by them made fell short of the reserved rent, from the time such lessor or lessors

lessors of the plaintiff, landlord or landlords, held the said lands.

Provided always, and it is further enacted, That if the tenant or tenants, his, her, or their assignee or assignees, do or shall at any time before the trial in such *ejectment*, pay or tender to the lessor or landlord, his executors or administrators, or his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent in arrear, together with the costs; then, and in such case all further proceedings on the said *ejectment* shall cease and be discontinued; and if such lessee or lessees, his, her, or their executors, administrators or assigns, shall upon such bill filed as aforesaid, be relieved in equity, he, she, and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease thereof made to him, her, or them. Sect. 4. Tenant paying all rent with costs proceedings to cease,

And whereas the remedy for recovering *rents-seck*, *rents of assize*, and *chief-rents*, are tedious and difficult, *it is therefore enacted*, that from and after the *twenty-fourth* day of *June*, 1737, all and every person or persons, bodies politic and corporate, shall and may have the like remedy by distress, and by impounding and selling the same; and in cases of *rents-seck*, *rents of assize*, and *chief rents*, which have been duly answered or paid for the space of *three years*, within the space of *twenty years* before the *first* day of this present session of parliament, or shall be hereafter enacted, and also in cases of rent reserved upon lease; any law or usage to the contrary notwithstanding. Sect. 5. Rent-seck may be recovered, and how, &c.

And it is further enacted, That in case any lease shall be duly surrendered, in order to be renewed, and a new lease made or executed by the chief landlord or landlords, the same new lease shall, without a surrender of all or any of the under leases, be as good and valid to all intents and purposes, as if all the under leases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person or persons, in whom any estate for life or lives, or for years, shall from time to time be vested by virtue of such new lease, and his, her, and their executors and administrators, shall be entitled to the rents, covenants, and duties, and have the like remedy for recovery thereof, and the under lessee shall hold and enjoy the messuages, lands, and tenements, in the respective under leases comprised, as Sect. 6. Chief leases may be renewed without surrendering the under-leases.

if the original leases out of which the respective under leases are derived, had been still kept on foot and continued; and the chief landlord and landlords shall have, and be entitled to, such and the same remedy, by distress or entry in and upon the messuages, tenements, and hereditaments, comprised in any such under lease, for the rents and duties reserved by such new lease; so far as the same exceed not the rents and duties reserved in the lease, out of which such under lease was derived, as they would have had in case such former lease had been still continued, or as they would have had in case the respective under leases had been renewed under such principal lease; any law, custom, or usage to the contrary hereof notwithstanding.

Sect. 7. *Nothing* in this act shall extend to that part of *Great Britain* called *Scotland.*

Stat. 11 *Geo.* 2. *Ch.* 19.

For the more effectual securing the Payment of Rents, and preventing Frauds by Tenants.

Sect. 1. *It is enacted*, That from and after the *twenty-fourth* day of *June*, in the year of our Lord *one thousand seven hundred and thirty-eight*, in case any tenant or tenants, lessee or lessees for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently, or clandestinely convey away, or carry off or from such premises, his, her, or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rents so reserved, due, or made payable; it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within that part of *Great Britain* called *England*, dominion of *Wales*, or the town of *Berwick upon Tweed*, or any person or persons by him, her, or them for that purpose lawfully impowered, within the space of *thirty days* next ensuing such conveying away, or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found, as a distress of such arrears of rent; and the

Landlords may distrain and sell goods fraudulently carried off the premises.

same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent; any law, custom, or usage to the contrary in any-wise notwithstanding.

Sect. 2.

Unless sold to any person not privy to the fraud.

Provided always, That no landlord or lessor, or any other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold *bona fide*, and for a valuable consideration, before such seizure made, to any person or persons not privy to such fraud as aforesaid; any thing herein contained to the contrary notwithstanding.

Sect. 3.

Penalty on the said fraud and assisting thereto.

It is further enacted, That from and after the said *twenty-fourth day of June*, if any such tenant or lessee shall fraudulently remove and convey away his or her goods or chattels as aforesaid, and if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away, or carrying off any part of his or her goods or chattels, or in concealing the same; all and every person or persons so offending, shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her or them respectively carried off and concealed as aforesaid, to be recovered by action of *debt* in any of his majesty's courts of record at *Westminster*, or in the court of session in the counties palatine of *Chester*, *Lancaster*, or *Durham* respectively, or in the courts of grand sessions in *Wales*; wherein no essoign, protection, or wager of law, shall be allowed, nor more than one *imparlance*.

Sect. 4.

If the goods exceed not the value of 50 l. landlords to have recourse to two justices.

It is also enacted, That where the goods and chattels so fraudulently carried off and concealed, shall not exceed the value of 50*l.* it shall and may be lawful for the landlord or landlords, from whose estate such goods and chattels were removed, his her, or their bailiff, servant or agent in his, her or their behalf, to exhibit a complaint in writing against such offender or offenders, before two or more justices of the peace of the same county, residing near the place whence such goods and chattels are removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed, who may summon the parties concerned, examine the fact and all

proper witnesses upon oath, or if any such witnesses be one of the people called *Quakers*, upon affirmation, as required by law; and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to enquire into the value of the goods and chattels by him, her, or them respectively so fraudulently carried off or concealed as aforesaid; and upon full proof of the offence, by order under their hands and seals, shall and may adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or landlords, his, her, or their bailiff, servant or agent, at such time as the said justices shall appoint; and in case the offender or offenders having notice of such order, shall refuse or neglect so to do, may and shall by warrant under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender or offenders; and for want of such distress may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprize, for the space of *six months*, unless the money so ordered to be paid as aforesaid shall be sooner paid.

Sect. 5.

Appeal from them to the quarter-sessions.

Provided also, That it shall and may be lawful for any person, who thinks himself aggrieved by such order of the said two justices, to appeal to the justices of the peace at the next general or quarter sessions to be held for the same county, riding, or division of such county, who may and shall hear and determine such appeal, and give such costs to either party as they shall think reasonable, whose determination therein shall be final.

Sect. 6.

On entering into a recognizance.

Provided also, That where the party appealing shall enter into a recognizance with one or two sufficient surety or sureties, in double the sum so ordered to be paid, with condition to appear at such general or quarter sessions, the order of the said two justices shall not be executed against him in the mean time.

Sect. 7.

Landlord may break open houses, &c. to seize goods fraudulently secured therein.

And it is further enacted, That where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her, or their servant or servants, or other person or persons aiding or assisting therein, shall be put, placed, or kept, in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so to prevent such goods or chattels from being seized and taken as a distress for arrears of rent; it shall and may be

be lawful for the landlord or landlords, lessor or lessors, his, her, or their steward, bailiff, receiver, or other person or persons impowered, to take and seize, as a distress for rent such goods and chattels (first calling to his, her, or their assistance the constable, headborough, borsholder, or other peace officer of the hundred, borough, parish, district, or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein; and in case of a dwelling-house, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the day time to break open and enter into such house, barn, stable, out-house, yard, close, and place; and to take and seize such goods and chattels for the said arrears of rent, as he, she, or they might have done by virtue of this or any former act, if such goods and chattels had been in any open field or place.

Sect. 8.

And may distrain stock or cattle on the premises for arrears of rent.

And it is further enacted, That from and after the said *twenty-fourth* day of *June*, which shall be in the year of our Lord 1738, it shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her, or their steward, bailiff, receiver, or other persons impowered by him, her, or them, to take and seize as a distress for arrears of rent, any cattle or stock of their respective tenant or tenants feeding or depasturing upon any common, appendant or appurtenant, or any ways belonging to all or any part of the premises demised or holden; and also to take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing thereon or on any part of the estates so demised or holden, as distress for arrears of rent; and the same to cut, gather, make, cure, carry, and lay up when ripe, in the barns or other proper place on the premises so demised or holden; and in case there shall be no barn or proper place on the premises so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure for that purpose, and as near as may be to the premises, and in a convenient time to appraise, sell or otherwise dispose of the same, towards satisfaction for the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods or chattels may be seized, distrained, and disposed of; and the appraise-

ment thereof to be taken when cut, gathered, cured, and made, and not before.

Sect. 9.

Tenants to have notice of the place where the distress is lodged. Distress of corn, &c. to cease if rent be paid before it be cut.

Provided always, That notice of the place where such goods and chattels so distrained shall be lodged or deposited, shall within the space of *one week* after the lodging or depositing thereof in such place, be given to the lessee or tenant, or left at the place of his or her abode; and that if, after any distress for arrears of rent so taken of corn, grass, hops, roots, fruits, pulse, or other product which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured or gathered, the tenant or lessee, his or her executors, administrators, or assigns, shall pay or cause to be paid to the lessor or landlord, lessors or landlords, for whom such distress shall be taken, or to the steward or other person usually employed to receive the rent of such lessor or lessors, landlord or landlords, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress, and which shall have been occasioned thereby; that then, and upon such payment, or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same and every part thereof shall cease; and the corn, grass, hops, roots, and fruits, pulse, or other product so distrained, shall be delivered up to the lessee or tenant, his or her executors, administrators, or assigns; any thing herein before contained to the contrary notwithstanding.

Sect. 10.

Distresses may be secured and sold on the premises.

And it is also enacted, That from and after the said *twenty-fourth* day of *June* 1738, it shall and may be lawful to and for any person or persons lawfully taking any distress for any kind of rent, to impound or otherwise to secure the distress so made, of what nature or kind soever it may be, in such place, or on such part of the premises chargeable with rent, as shall be most fit and convenient for impounding and securing such distress; and to appraise, sell, and dispose of the same upon the premises, in like manner, and under the like directions and restraints to all intents and purposes, as any person taking a distress for rent may now do of the premises, by virtue of the acts already in force; and that it shall and may be lawful to and for any person or persons whatsoever, to come and go to or from such place or part of the said premises, where any distress for rent shall be impounded and secured as aforesaid, in order to view,

view, appraise, and buy, and also in order to carry off or remove the same; on account of the purchaser thereof; and that if any *pound-breach* or *rescous* shall be made of any goods and chattels, or stock distrained for rent, and impounded or otherwise secured by virtue of this act, the person or persons aggrieved thereby shall have the like remedy, as in case of *pound-breach* or *rescous*, is given and provided by the said statute.

Sect. 11. Attornment of tenants void.

It is also further enacted, That from and after the said *twenty-fourth* day of *June*, in the year of our Lord 1738, all and every attornment or attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments, within that part of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be any wise changed, altered or affected by any such attornment or attornments: *provided always*, That nothing herein contained shall extend to vacate or affect any attornment made pursuant to, and in consequence of some judgment at law, or decree by order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee, after the mortgage is become forfeited.

Exception.

Sect. 12. Against tenants secreting ejectments.

It is also further enacted, That from and after the said *twenty-fourth* day of *June*, 1738, every tenant, to whom any declaration in *ejectment* shall be delivered for any lands, tenements, or hereditaments, in that part of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, shall forthwith give notice thereof to his or her landlord or landlords, or to his, her or their bailiff or receiver, under penalty of forfeiting the value of *three years* improved rack-rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds the the same, to be recovered by action of *debt*, to be brought in any of his Majesty's courts of record at *Westminster*, or in the county palatine of *Chester*, *Lancaster* and *Durham* respectively, or in the courts or grand sessions in *Wales*, where no essoign, protection, or wager of law shall be allowed, nor above one *imparlance*.

Sect. 13.

And it is further enacted, That it shall and may be lawful for the court, where such ejectment shall be brought,

Landlord is impowered to make himself defendant by joining with the tenant, &c.

brought, to suffer the landlord or landlords, to make him, her, or themselves defendant or defendants, by joining with the tenant or tenants to whom such declaration in *ejectment* shall be delivered, in case he or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord or landlords of any part of the lands, tenements, or hereditaments, for which such *ejectment* was brought, shall desire to appear by himself or themselves, and consent to enter into the like rule, that, by the course of the court the tenant in possession, in case he or she had appeared, ought to have done; then the court, where such *ejectment* shall be brought, shall and may permit such landlord or landlords so to do, and order a stay of execution upon such judgment against the casual ejector, until they make further order therein.

Sect. 14.

Rents how to be recovered where the demises are not by deed.

And to obviate difficulties that many times occur in the recovery of rents, where the demises are not by deed, *it is further enacted*, That from and after the said *twenty-fourth* day of *June* 1738, it shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but make use thereof as an evidence of the *quantum* of the damages to be recovered.

Sect. 15.

Rents are recoverable from under-tenants, when tenants for life die before the lease is expired.

It is also enacted, That from and after the said *twenty-fourth* day of *June*, 1738, where any tenant for life shall happen to die before or on the day on which any rent was reserved, or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, that the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such under tenant of such lands, tenements, or hereditaments, if such tenant for life dies on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last

year,

year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof respectively.

Sect. 16. Provision for landlords where tenants desert the premises.

And it is further enacted, That from and after the said *twenty-fourth* day of *June*, 1738, if any tenant holding any lands, tenements or hereditaments, at a rack-rent, or where the rent reserved shall be full *three-fourths* of the yearly value of the demised premises, who shall be in arrear of *one year's rent*, shall desert the demised premises and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to counterbalance the arrears of rent; it shall and may be lawful to and for two or more justices of the peace of the county, riding, division or place, (having no interest in the demised premises) at the request of the lessor or landlord, lessors or landlords, or his, her or their bailiff or receiver, to go upon and view the same, and to affix, or cause to be affixed on the most notorious part of the premises, notice in writing, what day (at the distance of *fourteen days* at least) they will return to take a second view thereof; and if upon such second view, the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, or there shall not be a sufficient distress upon the premises; then the said justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises; and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void.

Sect. 17. Tenants may appeal from the justices.

Provided always, That such proceedings of the said justices shall be examinable in a summary way by the next justice or justices of the assize of the respective counties, in which such lands or premises lie, and if they lie in the city of *London* or county of *Middlesex*, by the judges of the court of *King's Bench* or *Common Pleas*; and if in the counties palatine of *Chester*, *Lancaster*, or *Durham* then before the judges thereof; and if in *Wales*, then before the grand courts of sessions respectively, who are hereby respectively impowered to order restitution to be made to such tenant, together with his or her expences and costs, to be paid by the lessor or landlord, lessors or landlords, if they shall see cause for the same; and in case they shall affirm the act of the said justices, to award costs, not exceeding *five pounds* for the frivolous appeal.

And

Sect. 18.

Tenants holding the premises after the time they notify for quitting them, to pay double rent from such time.

And it is further enacted, That from and after the said *twenty-fourth* day of *June* 1738, in case any tenant or tenants shall give notice of his, her, or their intention to quit the premises, by him, her, or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, that then the said tenant or tenants, his, her, or their executors or administrators, shall from thence forward pay to the landlord or landlords, lessor or lessors, double the rent or sum which he, she, or they should otherwise have paid; to be levied, sued for, and recovered, at the same time, and in the same manner, as the single rent or sum, before the giving such notice, could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid.

Sect. 19.

Distresses for rent not unlawful, &c. for any irregularity in the disposition of them.

And it is further enacted, That from and after the said *twenty-fourth* day of *June*, 1738, where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents, the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers *ab initio*; i. e. *from the beginning*, but the party or parties aggrieved by such unlawful act or irregularity, shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby and no more, in an action of trespass or in an action on the case, at the election of the plaintiff or plaintiffs: *Provided always*, that where the plaintiff or plaintiffs shall recover in that action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the remedies for the same as in other cases of costs.

Sect. 20.

Nor tenants to recover on tender of amends.

Provided nevertheless, That no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity aforesaid, if tender of amends has been made by the party or parties distraining his, her or their agent or agents, before such action brought.

Sect. 21.

In actions against persons intitled to rent, defendants may plead the general issue, &c.

And it is further enacted, That from and after the *twenty-fourth* day of *June*, 1738, in all actions of trespass or on the case, to be brought against any person or persons entitled to rents or services of any kind, his, her or their bailiff or receiver, or any other person or persons, relating to any entry by virtue of this act, or otherwise, upon the

the premises chargeable with such rents or services, or to any distress or seizure, sale, or disposal of any goods or chattels thereupon; it shall and may be lawful to and for the defendant or defendants in such action to plead the general issue, and give the special matter in evidence; any law or usage to the contrary notwithstanding: And in case the plaintiff or plaintiffs shall be nonsuited, discontinue his, her or their action, or have judgment against him, her or them, the defendant or defendants shall receiver double costs of suit.

DISTRESS

IS derived from the *Latin*, *districtio*. In it's general signification it refers to a thing which is taken and distrained for rent in arrear or other duty. By the *common law* distresses for rent were not to be sold, but now by *statute* it is otherwise. The effect of a distress is to compel the party either to replevy the thing taken and contest the same in an action against the distrainor, or to compound and pay the debt or duty for which he was distrained.

How Tenants are to be relieved on an illegal Distress under Stat. 11 Geo. 2. Ch. 19. Sect. 22.

It is also enacted, That from and after the said *twenty-fourth* day of *June*, 1738, that it shall and may be lawful to and for all defendants in *replevin* to avow or make conusance generally, that the plaintiff in *replevin*, or other tenant of the lands and tenements whereon such distress was made, enjoyed the same under a grant or demise, at such a certain rent, during the time the rent distrained for was incurred, which rent was then and still remains due; or that the place where the distress was taken, was parcel of such certain tenements, held of such honour, lordship or manor, for which tenements the rent, relief, heriot, or other service distrained for, was at the time of such distress and still remains due, without further setting forth the grant, tenure, demise, or title of such landlord or landlords, lessor or lessors, owner or owners of such manor; any law

Defendants in replevin may avow or make conusance that the plaintiff held the premises under a demise at a certain rent, &c.

law or usage to the contrary notwithstanding: and if the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have judgment against him, her, or them, the defendant or defendants in such *replevin* shall recover double costs of suit.

Sect. 23. To prevent vexatious replevins, sheriffs to take from plaintiff two sureties by bond, &c.

And to prevent vexatious *replevins* of distresses taken for rent, that from and after the said *twenty-fourth* day of *June*, 1738, all sheriffs and other officers having authority to grant *replevins*, may and shall, in every replevin of a distress for rent, take in their own names, from the plaintiff, and two responsible persons as sureties, a bond in double the value of the goods distrained, (such value to be ascertained by the oath of one or more credible witness or witnesses not interested in the goods or distress; which oath the person granting such *replevin* is hereby authorised and required to administer) and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods and chattels distrained, in case a return shall be awarded before any deliverance be made of the distress; and that such sheriff or other officer aforesaid, taking any such bond, shall, at the request and costs of the avowant or persons making conusance, assign such bond to the avowant or person aforesaid, by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses; which may be done without any stamp provided the assignment so indorsed be duly stamped before any action be brought thereupon; and if the bond so taken and assigned be forfeited, the avowant or person making conusance, may bring an action and recover thereupon in his own name; and the court, where such action shall be brought, may, by a rule of the same court, give such relief to the parties upon such bond, as may be agreeable to justice and reason; and such rule shall have the nature and effect of a defeasance to such bond.

What PERSONS may DISTRAIN.

THE lord of a manor may distrain cattle, *&c. damage-feasant*, i. e. *doing mischief*, where the tenant puts in more cattle in a common than he ought to do.

Also for *rent-service*.

Also for an *amerciament* in his *leet*.

Also for a release, *&c.* and has no other remedy; but his executors may bring an action of *debt* and cannot distrain.

A commoner may distrain the cattle of a stranger, *damage-feasant*, i. e. *doing mischief*, and he is not obliged to shew, that thereby he lost his common.

A tenant at sufferance may distrain cattle, *doing mischief*.

So may any person claiming a rent, *&c.* by *prescription* or by *grant*.

The person to whose use any other man is *enfeoffed* of lands or tenements by the *statute of uses* may distrain.

An executor of tenants for life may distrain for rent in arrear, by *stat.* 32 *H.* 8. *c.* 37.

If sheep are delivered to a single woman to dung her land, and she marries, and the husband commands the owner to take the sheep off the lands, who refuses, the husband may distrain them for *doing mischief*.

A person may distrain cattle, *&c.* in the act of *doing damage*, though the owner makes fresh pursuit; and cattle, though escaped may be distrained for *doing damage*.

A person that takes cattle as *estrays*, may distrain them till he is paid for their meat.

A taylor may distrain a garment, until paid for the making.

If *A.* is indebted to *B.* for board, and delivers goods to him until he is satisfied; *B.* may distrain them until he is paid.

Surveyors of highways may distrain a person for not doing statute work under several acts of parliament.

Officers may distrain for forfeitures of inn-keepers, *&c.*

Where the law gives a distress for any public benefit, the officer that distrains may also sell.

If a person possessed of 200 acres of open moor land sells 50 acres thereof, each party ought to inclose against the other; and if the cattle of one go into the land of the other, they may be distrained *doing mischief*.

If a person makes a gift *in tail* to another, reserving fealty and a certain rent, and afterwards he grants away the fealty, reserving the rent and reversion to himself, in this case he may distrain for the rent, for the grant of the fealty is void, for it cannot be reserved from the reversion.

Also if a rent be assigned to make a partition or an assignment of dower equal, he or she to whom the rent is assigned may distrain for the same.

What

What Person may not distrain.

An inn-keeper cannot distrain for victuals eaten by his guest.

Where two parcels of land are distinctly let, there cannot be a joint distress for both rents.

A tenant in dower cannot distrain for arrears of rent due before the recovery.

A bailiff, where a lawful tender of rent has been refused, may not distrain without the command of the landlord, nor will such distress be justifiable, if the tenant can support the tender.

If a person has lands for the life of *J. N.* and makes a lease for a term of years, reserving a rent, and the rent is behind, and *J. N.* dies, in this case he may not distrain, because his reversion is determined.

If the tenant holds of the lord by fealty and rent, and the lord grants away the fealty, and reserves the rent, and the tenant attorns; in this case, he that was lord may not distrain for the rent, for it becomes a *rent-seck*.

For what Cause, and for what Things, a Distress may be made.

A distress may be made for a *fine* in a *court-leet*.

Also for an *amerciament* there.

Also for an *amerciament* for breach of a *bye-law*, *&c.* there.

A distress is incident to *fines* and *amerciaments* in *leets*.

Also for an *amerciament* in a *court-baron*, by *special prescription*.

Also for an *amerciament* for not doing suit there.

The lord may *prescribe* to distrain for *amerciaments* there.

Also it may be for an *amerciament* at the sheriff's *tourn*, *&c.* if there be a *special prescription* to amerce and distrain.

And for an *amerciament* or fine in the *tourn*.

Also for a rent-service, and all manner of services certain.

As if *A.* gives lands to *B.* to serve him, *&c.* for such service on request or refusal, *A.* may distrain.

Also a distress may be made for *heriot-service*.

But

But for *heriot-custom* he can only seise, except there is a custom also to distrain; and *note*, A seizure must be only of the proper beasts of the tenant, but a distress may be of any man's beasts which are on the land.

A person may distrain for *toll*, but then a *special title* or *prescription* must be set forth, in pleading.

By *custom*, a distress may be taken for the repair of bridges, churches, harbours, *&c.*

A distress is incident to a *rent-service* of common right.

And any rent by *prescription* may be distrained for.

So may any rent by *grant*, but not for rent-service made *seck* by grant.

A person cannot *distrain* for a certain *lect* without *prescription*, because it is against common right: And the tithingman who collects it of the people residing there, ought to *prescribe* to distrain for it.

For a suit to an *hundred* by reason of a tenure, a distress is due of common right.

A distress may be made for a tax set by the inhabitants of a parish, or justices of the peace, *&c.*

As for a *poor's tax*.

Also for a *suit* to a *mill*.

Also for *rent service*, and all manner of services certain.

If one person holds of another by *fealty* and *rent*, who marries and dies, the widow shall have a third part of the rent as *rent-seck*, and yet in favour of her dower she may distrain for it.

If *A.* grants a rent-charge to *B. in tail*, if the King's bailiff distrains, *B.* may also distrain on his under tenant.

Distresses may be made for *reliefs*, *estrays*, *pledges*, *&c.*

Note. By *stat.* 8 *Ann. c.* 14. whereas tenants for the life of another person, and lessees or tenants for years, or at will, frequently hold over after their leases or terms are expired, when no distress could by law be taken, the landlord is thereby impowered to distrain after the expiration of such term or lease: *Provided* it be within *six calendar months* after, and during such landlord's interest or the tenant's possession.

By *stat.* 11 *Geo.* 2. *cap.* 19. *sect.* 18. where a tenant who has power to determine his lease, gives notice of his intention to quit the premises, and yet refuses to deliver up the possession at the time contained in the notice, he, his executors or administrators shall thenceforward pay to the landlord or lessor double the rent

 which

which they ſhould otherwiſe have paid, to be levied, *&c.* in the ſame manner as the ſingle rent or ſum before the giving ſuch notice, would be levied, *&c.* and this double rent, *&c.* is to continue to be paid during all the time the tenant ſhall continue in poſſeſſion, *ante* 80.

In what Inſtances a Diſtreſs cannot be made.

On a leaſe of tithes, rendering rent, no diſtreſs can be made of the tithes, becauſe the tithes are the things leaſed.

A *fine* on transferring a copyhold, due by *cuſtom* cannot be diſtrained for, unleſs there be a cuſtom to diſtrain for it. But the law is otherwiſe if due by *tenure*; becauſe when a duty is raiſed by cuſtom, a diſtreſs for it muſt alſo be by cuſtom.

If a *rent-charge* is granted with a clauſe in the name of a penalty, and there is a clauſe of diſtreſs, and the year incurs, the perſon who grants cannot diſtrain for the penalty, for it depends on the rent.

If the huſband leaſes his wife's land, and the wife dies without having had iſſue, the huſband cannot diſtrain, becauſe the reverſion goes to her heir.

There can be no diſtreſs made for rent where there is no reverſion; as where a termor grants away all his term to another rendering rent, he cannot diſtrain for it. 2 *Wilſon* 375.

If a perſon be poſſeſſed for life of a *rent-charge* or *ſervice*, and arrears of rent incur, and then he grants over the rent, he cannot diſtrain for the arrears, becauſe they are ſevered from the freehold.

The particular Times when the Law allows a Landlord to make a Diſtreſs for Rent, or any other Matter in Arrear.

No diſtreſs ought to be made on a *Sunday*, except for *doing damage*.

If a perſon grants a leaſe, and after the expiration of the term there is rent in arrear, no diſtreſs can be made for it; *except* the landlord's title and the tenant's poſſeſſion continue.

If

If a lease be made till *Michaelmas* for *one year*, rendering rent at *Michaelmas*, the landlord cannot distrain before *Michaelmas*, at which instant the term is ended.

For *rent-service*, *rent-charge*, *rent-seck* or other duty, except *doing damage*, no distress shall be made in the night; but for *doing damage* distress may be made in the night.

Note. *Rent-service* is, where a man holds his lands of his lord by *fealty* and a *certain rent*. Or where a man makes a lease to another for a term of years, and reserves a yearly rent to be paid him for them. Rent-service, what.

Rent-charge is, where a man makes over his estate to another by deed indented, either in *fee* or *fee-tail*, or for a *term of life*, yet reserves to himself, by the same indenture, a sum of money yearly to be paid to him, *with a clause of distress* for non-payment. Rent-charge, what.

Rent-seck otherwise a *dry-rent*, is when a man, making over his estate by deed indented, reserves a yearly rent to be paid to him, *without a clause of distress* being mentioned in the indenture. Rent-seck, what.

Where the cattle escape *accidentally*, there they are not distrainable, until they have been so long on the land as to have laid down and risen again to feed; but if they escape by *default of their owner*, they are distrainable the first minute.

Notice must be given to the owner of the cattle or other thing disposed of, after the distress is made; but if not given *personally*, it must be left at the dwelling-house, or some other notorious place on the premises where the distress is made.

In what Places, and of what Things, a Landlord, or the Lord of the Fee, may or may not make a Distress.

A distress cannot be taken on the *King's lands*, while in his possession; but the King may distrain in all the lands of his tenants though held by others, for rents, avowries, fee-farms, *&c.*

The sheriff may distrain throughout the county, for an *amerciament* in the *torn*.

A person *fined* at the *leet*, being one of the *deziners*, shall be distrained through all the jurisdiction of the *leet*, though he be of another *dezin*.

Where a man has a *leet* within his manor, he cannot distrain out of his manor; because a person cannot

diſtrain out of the precinct of the court that orders it. But he may diſtrain in any place within the juriſdiction of the court.

But the ſheriff may diſtrain the goods of any man, at any place within his county, in another man's houſe or ground, as well as the owner's.

A landlord may diſtrain whatever he finds on his premiſes though not the property of his tenant, except as follows:

Such things as are for the maintenance and benefit of trade; as an horſe that is ſhoeing in a ſmith's ſhop, an horſe in an inn, the materials in a weaver's ſhop for making of cloth, cloth or garments in a taylor's ſhop, ſacks of corn or meal in a mill; nor can any thing diſtrained by the tenant for *doing damage*, be diſtrained for rent, for then it is in the cuſtody of the law. *Gilb.* 44.

Oxen of the plough may not be diſtrained, nor a mill-ſtone though it is raiſed to be picked, ſo long as it lies on the other ſtone. *See Gilb. Law of Diſtreſſes and Replevins, from* 34 *to* 44, *edit.* 1757.

Neither can a diſtreſs be taken of ſheep, if there is a ſufficient diſtreſs beſide.

Neither can a perſon ſever horſes joined together, or to a cart but muſt diſtrain cart and all.

Likewiſe victuals cannot be diſtrained.

Nor a man's tools wherewith he works at his trade; as the carpenter's ax, or the ſcholar's books, while any other diſtreſs can be found.

Neither can any thing which is fixed to the freehold be diſtrained, as furnaces, coppers or vats, fixed for dyers or brewers, nor the windows or doors of an houſe while they are on the hinges: But if they are moved off from the hinges, they may be diſtrained.

The landlord cannot diſtrain tables fixed in the houſe of his tenant, or any thing which cannot be attached in an *aſſize*; neither can any thing be diſtrained on which the ſheriff cannot make a *replevin*, or that cannot be reſtored again in as good a condition as when it was diſtrained.

A court-*leet* can amerce for nothing but only for public nuiſances.

If living cattle be diſtrained they ought to be put in a common pound, or elſe in ſome open place, as in his own yard or cloſe that diſtrained them, or in ſome other perſon's by his conſent, ſo that the owner may come lawfully

awfully to feed them; and the owner of the cattle must have notice where they are, if they are not in the common pound; and then if they die for want of meat, it is the owner's fault; but if they are put in a pound *covert*, i. e. *inclosed*, where the owner cannot come and feed them, or out of the county, and die for want of meat, then he that distrained them shall make satisfaction for them.

No distress can be driven out of the county where it is taken, nor out of the *hundred*, but to an open pound within *three miles*; nor can a distress be impounded in several places, nor above *four-pence* taken for the fees of impounding one whole distress, on pain of *five pounds*.

If the owner of the cattle tender amends to him that distrained, and he refuses it, yet the owner may not take his cattle out of the pound, if he does, an action for breaking the pound lies against him; but he must sue out a *replevin* to have his cattle delivered to him out of the pound, and afterwards plead his tender of amends, on which the jury must end the controversy: and in such case the owner must feed them.

But if the owner of the cattle procures a *replevin* to deliver them, and he that distrains them will not deliver them; in this case if they die for want of meat, it is at the peril of him that distrained, and the owner shall recover damages against him in an action brought for the same.

If a person sends his servant to take a distress for rent or service, who puts it in the pound, if the owner of the beasts or a stranger takes them out, the master shall have an action for breaking the pound against the offender.

If a person distrains cattle, and pounds them in another man's close with his consent, and the owner of the cattle takes them out, in this case, he that made the distress shall have an action for *pound-breach*, and the owner of the close an action of *trespass* for breaking his close.

If a person breaks the pound, and takes out goods, he that distrains may have an action against the party for *pound-breach*; and may also take the goods again wheresoever he finds them, and put them in the pound again.

A person cannot distrain for part of his rent, and make a second distress for the remainder.

The ſtatute of *Marlbridge*, *c.* 14. forbids the taking of an exceſſive diſtreſs; but if a landlord diſtrains an ox or an horſe for *one ſhilling*, if there be nothing elſe on the land on which a diſtreſs can be made, then this diſtreſs is not exceſſive; but if there were a ſwine or calf, *&c.* then the taking of an ox or an horſe is exceſſive, becauſe he might have taken a beaſt of leſs value.

No diſtreſs can be made for *debt*, *account*, *treſpaſs* *, or for *repairs*, nor for any ſervices that are not certain, or can be reduced to certainty.

If an horſe or beaſt come into another man's ground as an *eſtreat*, he may not work them; nor may a man work a diſtreſs, for he has neither property nor poſſeſſion in right; but if a man has any kind of cattle in pawn, he may work or uſe them in the ſame manner as the owner might have done.

If the tenant reſiſts the lord with force and arms in ſuch a manner that he dares not come to demand or diſtrain for his rent; or if there be no diſtreſs on the ground, or none ready to pay the rent, then in this caſe the lord may have a writ of *novel diſſeiſin* againſt the tenant and recover his rent or arrears: and if the rent be behind another time, he may have a *rediſſeiſin*, and recover double damages.

If a landlord comes to diſtrain for rent, and ſees the cattle, and the tenant, or his ſervants drive them out of his *fee*, he cannot have a writ of *reſcous*, becauſe the cattle were not in his poſſeſſion; but he may follow them and diſtrain them in another man's ground, if it be for rent, but not for *doing damage*; for they muſt be taken in the act of *doing damage* or not at all.

If a perſon diſtrains goods, and does not deliver the cauſe or reaſon for ſo doing, if they are put in an houſe, the owner may break the houſe and take them out.

Or if a perſon diſtrains goods without a cauſe, the owner may reſcue them; but if they be pounded, he may not break the pound and take them out, becauſe they are in the cuſtody of the law. But if he finds the pound-door unlocked he may take them out.

Cattle driving to a market, and put in a paſture by the way, are not protected from being diſtrained.

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* Diſtreſs may be for treſpaſs damage-feaſant.

If

If a perſon makes a feoffment in fee by indenture, reſerving rent, he cannot diſtrain for that rent, unleſs a diſtreſs be expreſsly reſerved; and if the feoffment be made without an indenture, reſerving rent, that reſervation is void in law. The law is the ſame where a gift is made *in tail* or a leaſe for the *term of life* is made, with a remainder over in fee, reſerving a rent, that reſervation is void in law.

If beaſts be diſtrained *doing damage*, tender of ſufficient amends makes the perſon who diſtrains liable to damages for the detainer, though not for the diſtreſs.

The Manner in which Things taken in Diſtreſs are to be diſpoſed of.

Whoever diſtrains any thing that has life (as cattle) ought to put them in an *open pound*, ſo that the owner may reſort to feed them; for in that caſe the owner is to feed them at his peril.

However the perſon who diſtrains may put them in a *cloſe pound*; but then he muſt keep them at his own peril, and is not entitled to any ſatisfaction for his trouble or expence.

By the *common law* a lord who diſtrained was bound to remove his diſtreſs, if the tenant's intereſt continued, or elſe the lord became a treſpaſſer by his detaining poſſeſſion of part of the demiſed premiſes. But the ſtatute which made corn in ſheaf, *&c.* diſtrainable, *enacted*, that it might be ſecured on the land.

By *ſtat.* 11 *Geo.* 2. perſons taking a diſtreſs for rent, may impound and ſecure the diſtreſs in ſuch place or part of the premiſes as ſhall be moſt fit; and egreſs and regreſs, to view, appraiſe, buy, carry off, *&c.* are given by this act, with the like remedy for *pound-breach* and *reſcous*, as in other caſes by former ſtatutes.

If a man diſtrains dead goods, as utenſils of an houſe, or ſuch like, which may take damage by wet or weather, *&c.* he ought to impound them in an houſe, or other *cloſe* pound; for if he impounds them in an *open* pound he ſhall anſwer for them.

If a diſtreſs be impounded in ſeveral liberties, it is an offence within the words, *ſeveral places*, of *ſtat.* 1 & 2 *P. & M.* But where *three perſons* diſtrain a flock of

sheep, and severally impound them in *three* several pounds, yet they shall forfeit but one *five pounds*, and one *treble damages*.

Whether the distress be of live or dead things, they cannot be impounded in any pound either open or close, above *three miles* from the place of taking, and that must be within the same county.

If a man takes an horse for a distress, and puts it in an open pound, and the horse leaps three times over the pound, which is of the common heighth, for which reason he ties him to a post in the pound, whereby he strangles himself, yet this will not excuse the distrainer, but an action of *trespass* lies against him. 2 *Wilson* 313, 314. *Gilb.* 52.

If a cow is taken for a distress, the distrainer cannot milk her, for though she would be the better for it, yet he ought not to do good to the owner without his consent; and if the cow perishes through not milking, *&c.* yet the distrainer is justified and may distrain again.

If a person distrains an hog *doing damage*, and puts it into a common pound from whence it escapes, an action of *trespass* will not lie against the owner for the damage done; for it is the distrainer's fault to put the hog in a pound that will not hold him.

If there exists a custom in a town, that if a butcher kills any meat there, and sells the flesh in the market, he shall pay *two-pence* for every hide, and that the bailiffs may distrain the hide if the butcher refuses to pay the *two-pence*, provided the custom is good, and that an hide so distrained is well taken, yet the bailiffs cannot tan the hide to prevent its rotting; for the custom to distrain does not enable them to tan it, the property being as if altered thereby, the marks by which it may be known again being taken away, so that the owner cannot have it again, or replevy it again in kind.

If turfs lie on a common *doing damage*, a commoner may distrain them but he cannot burn them.

If a person has the distress on a return *irreplevisiable*, he cannot work it, because the judgment is to commit it to the pound, there to remain, *&c.*

But cattle taken on a writ of *withernam*, may be worked and used; as if they be cows they may be milked, or if oxen or horses they may be reasonably worked, because in that case they are delivered in lieu of the party's own cattle.

A writ

A writ of *withernam* issues where goods or cattle distrained are driven out of the county, and the sheriff on a *replevin* cannot make a deliverance to the party distrained, the writ in this case is directed to the sheriff, for the taking as many beasts or goods belonging to the party (who drove away such goods and chattels) into his keeping, till the party makes deliverance of the *first distress*, &c.

Where a distress cannot be moved, it must be secured in the land or place where it is taken.

If a lord takes a distress for an *amerciament*, he may impound or sell it at his pleasure.

A distress in a *court-leet* may be sold.

A distress taken for a *fine*, for not repairing highways, may be sold.

Where a *statute* says, that a penalty shall be levied by distress, a power to sell is given without further words.

But though the words in acts of parliament *(to be levied by distress)* imply a sale, and give the officer who distrains a power to sell, yet if such officer sells on credit, when he might have sold for ready money, he is immediately chargeable to the party for whom the distress was taken.

A distress and sale for a breach of a *bye-law* is ill, for a corporation can only distrain for a breach of a bye-law, except there be a custom also to sell.

A distress taken is only as a pledge or security for some thing due; and by the *common law*, the taking did not alter the property, and therefore the party did not sell it; and such statutes as have enabled the person who distrains to sell, &c. do not extend to a distress taken for the breach of a *bye-law*.

Of RESCOUS.

In what Cases lawful, and where not.

IF a landlord distrains where there is no rent due, the tenant may make a rescue, and oppose the distress.

The like, if a landlord comes to distrain, and the tenant tenders his rent unto him, and the lord will notwithstanding distrain, in this case the tenant may rescue the goods or other things distrained, and be justified in so doing.

If rent be in arrear, and the lord distrains the tenant's cattle in the *highway* within his *fee*, here likewise the tenant

nant may rescue such cattle, because no man his a right to distrain in the highway but the king and his officers specially authorized.

If a landlord distrains *cattle of the plough*, where there is a sufficient distress besides, or if he distrains any thing that is not distrainable by the common or statute law, in this case it is lawful for the tenant to make a rescue thereof.

If a lord comes to distrain cattle which he sees within his fee, and the tenant or any other person, to prevent such distress, drive the said cattle out of his fee, the lord may follow them with fresh pursuit, and distrain them, and the tenant cannot justify a rescous of them, because the law deems such distress as taken within his fee.

If a rescous be returned without shewing the place where the rescous was made, such return is void.

If a person comes to distrain cattle *doing damage*, and he sees the cattle in his ground, and the owner thereof drives them out before the distress is made, the owner of the ground cannot follow and take such cattle; for if he does, the person who has a right therein may rescue the same, for they must be *doing damage* at the time of the distress, and therefore the owner of the ground can only redress himself by action of *trespass*.

PRECEDENTS and INSTRUCTIONS for making a DISTRESS.

The Form of a Letter of Attorney to impower a Person to distrain for Rent.

KNOW ALL MEN by these presents, that I *A. B.* of the parish of ——— in the county of ———, Esq; for divers good causes and considerations me hereunto moving, HAVE made, nominated, authorized, constituted and appointed, and by these presents DO make, nominate, authorize, constitute, and appoint *C. D.* of ———, in the county aforesaid, Esq; and *E. F.* of the same place, gentleman, jointly and severally my true and lawful attorney and attornies for me, and in my name, place and stead, either jointly or severally, to enter into and upon ALL that messuage or tenement, farm, lands, hereditaments, and premises, situate and being in the parish of ———, in the county aforesaid, or one of them,

and now in the tenure or occupation of *G. H.* yeoman, his under tenants or aſſigns, and held by him of me, at or under the yearly rent of ——— pounds, and to make or cauſe to be made one or more diſtreſs or diſtreſſes on all or any hay, corn, goods, chattels, cattle, beaſts, ſheep, or other effects or things whatſoever ſtanding, lying, or being, in or on the ſaid demiſed premiſes, or on any part thereof, for all ſuch rent or rents, as was or were due, owing, or in arrear unto me at *Michaelmas day* laſt paſt, for or on account of the ſaid premiſes or any part thereof; and ſuch diſtreſs or diſtreſſes, when made, or taken for me and on my behalf, to hold, detain, and keep, or cauſe to be held, detained, and kept, until payment and ſatisfaction be made unto me for all ſuch rent due and in arrear unto me, and all coſts and charges of making ſuch diſtreſs, and in caſe of non-payment thereof within the time limited, after ſuch diſtreſs made, by the laws now in force, to appraiſe, ſell, and diſpoſe of the ſame, or cauſe the ſame to be appraiſed, ſold, and diſpoſed of according to law. I the ſaid *A. B.* hereby giving and granting unto my ſaid attornies and attorney, jointly or ſeverally, full power and authority for me and in my name, on my behalf to do, or cauſe to be done, all ſuch acts, matters, and things whatſoever, touching, concerning, or any ways relating to the ſaid premiſes, as ſhall or may be neceſſary to or for the purpoſes aforeſaid, as fully and effectually, to all intents and purpoſes whatſoever, as if I myſelf was perſonally preſent, and did the ſame, hereby ratifying, confirming, and allowing, all and whatſoever my ſaid attornies or attorney, or either of them, ſhall lawfully do or cauſe to be done in or about the ſaid premiſes by virtue of theſe preſents. IN WITNESS whereof I the ſaid *A. B.* have hereunto ſet my hand and ſeal this —— day of ———, in the year of our Lord ———.

Sealed and *delivered* (being firſt duly ſtamped) in the preſence of us. }

The Form of a Warrant to diſtrain.

KNOW ALL MEN by theſe preſents, that I *F. G.* of *London*, Eſq; DO hereby authorize and appoint *T. C.* of, *&c.* gent, to take any perſon or perſons to his aſſiſtance,

assistance, and to enter into the house of *A. B.* in, *&c.* and there make a distress of all such goods and chattels as are in and upon the premises or any part thereof, for —— pounds for one half year's rent due to me the said *F. G.* at *Michaelmas-day* last. And after the said goods are so distrained, if the said *A B.* does not, within the time limited by law, pay the said rent, or replevy the said goods, then and in such case I do hereby authorize you the said *T. C.* to cause the said goods to be appraised, and, according to such appraisement, to make sale thereof to such person or persons who will buy the same; and to dispose of the money arising by the sale, in such manner as by the statute made for that purpose is directed: and for your so doing, this shall be your sufficient warrant, WITNESS my hand and seal this —— day of ——, in the year 1775.

F. G.

Sealed, &c.

Note. *The above letter of attorney and warrant must be ingrossed on a half-crown sheet of stamped paper, or a warrant may be made in the following form on paper without a stamp.*

To Mr. *T. C.* my Bailiff, *Greeting.*

SIR,

DISTRAIN the goods and chattels of *A. B.* in the house he now dwells in, situate in ——, in the county of ——, for —— pounds, being *two years* rent (*or as the case may be*) due to me, for the same at *Michaelmas* last, and for your so doing this shall be your sufficient warrant. Dated, *&c.*

F. G.

Words used in distraining Goods, when done by the Landlord's Bailiff.

I *T. C.* as bailiff to Mr. *F. G.* do distrain this *table* (*or the first thing you lay your hands on*) in the name of the whole goods and chattels in this house, for and towards the satisfaction and payment of the sum of —— pounds, being

being *two years* rent at —— pounds *per annum*, due to the said *F. G.* at *Michaelmas* last.

Note. *After this proceed to take an inventory of so much of the goods as you judge will be sufficient to pay the rent in arrear.*

After the inventory is taken, a fair copy must be made of it, beginning with the following title, viz.

Form of the Inventory.

AN INVENTORY of the goods and chattels distrained by me *T. C.* as bailiff to Mr. *F. G.* in the dwelling-house of *A. B.* in ——, in the county of ——, this —— day of ——, being for *two years* rent due to the said *F. G.* for the said house and appurtenances therewith demised, at *Michaelmas-day* last, and as yet in arrear and unpaid.

Imprimis. In the Kitchen.

		£.	s.	d.
2	WAINSCOT Tables - - -			
	6 Old chairs - - - - -			
5	Copper saucepans - - - - -			
2	Pottage pots, *&c.* - - - - -			

In the Parlour.

1	Large pier looking-glass, and two sconces in gilt frames - - - - -			
2	Mahogany card-tables, *&c.* - - -			

In the Dining Room.

6 Hair-bottom chairs, mahogany frames, *&c.*

Note. *At the end of the inventory write the following notice to the person whose goods you distrain, viz.*

Mr. *A. B.*

TAKE notice that I, as bailiff to Mr. *F. G.* have this day distrained the goods and chattels mentioned in the above inventory for the sum of —— pounds, being *two years* rent due at *Michaelmas-day* last, for the premises

above

above mentioned, and have secured the said goods and chattels in the *front parlour* of the said house, and that unless the said arrears of rent and charges of distress be paid, or the goods replevied within *five days* from the date hereof, the said goods will be appraised and sold, according to law. Dated, *&c.* *T. C.*

Memorandum of delivering a true Copy of the Inventory to the Tenant.

A true copy of the above inventory and notice was this —— day of ———, 1775, delivered to the above mentioned *A. B.* in the presence of us, *P. Q.*
R. S.

This inventory with the notice thereunder written must be left at the house, with any person dwelling therein; or, if there be no person in the house, on a table in the kitchen, or some other notorious part of the house. It is proper to have another person with you when you make a distress, to examine the inventory, and to be witness to the transaction, if called on for that purpose.

N. B. The safest way is to remove the goods immediately, and in the notice to acquaint the tenant where they are removed to; but it is now most usual to let them stay on the premises, and leave a man in possession to protect them till you are entitled to sell them by law, which is on the *seventh day*, because the statute says, you are to give *five days* notice, and it is held and understood to be *five whole days*, which must be *exclusive* of the day the distress was made.

If the tenant wants further time to raise the money, and the landlord chuses to give him such indulgence, he must take a *memorandum* from the tenant, that possession is continued at his request, and by his desire, or the landlord will be a trespasser in continuing the same beyond the time limited by the statute, and liable to an action for so doing.

On the *seventh day*, the sheriff's office should be searched, to see if the goods are *replevied*; if not, go to the premises, and if the tenant is there, or any body on his

his behalf, demand the rent and charges of diſtreſs; if he does not pay the ſame, ſend for a conſtable and two ſworn appraiſers; let them ſee the goods taken in diſtreſs, and then the appraiſers muſt be ſworn by the conſtable, by laying their right hands on a bible having the new teſtament in it. The common way is for the appraiſers to buy the goods at their own valuation; and a receipt at the bottom of the inventory, witneſſed by the conſtable, is conſidered as a ſufficient diſcharge; but if the goods taken in diſtreſs are of great value, let there be a proper bargain and ſale between the landlord, the conſtable, the appraiſers, and the purchaſer, for the better proving of the tranſaction afterwards, if there ſhould be occaſion. The conſtable muſt adminiſter to the appraiſers the following oath:

The Appraiſer's Oath.

YOU and either of you ſhall make a true appraiſement of the goods now ſhewn to you, and mentioned, and contained in this inventory, (*the conſtable having at the ſame time the inventory in his hand, and ſhewing the ſame*) according to the beſt of your judgment,

So help you God.

Memorandum of the Appraiſers being ſworn.

MEMORANDUM that on the —— day of ——, 1775, *S. M.* of, *&c.* and *D. L.* of, *&c.* two ſworn appraiſers, were ſworn on the *Holy Evangeliſts* by me *W. O.* of, *&c.* conſtable, to make a true appraiſement of the goods and chattels mentioned in this inventory, according to the beſt of their judgment. Witneſs my hand. *W. O.* Conſtable.

Note. *After the appraiſers are ſworn and have viewed and valued the goods, indorſe the following memorandum on the inventory for the appraiſers to ſign.*

Memorandum to be indorſed on the Inventory.

WE the above-named *S. M.* and *D. L.* being ſworn on the *Holy Evangeliſts* by *W. O.* conſtable above-named, to make a true appraiſement of the goods mentioned

mentioned in the above inventory, according to the best of our judgment, and having viewed the said goods, DO adjudge and value the same at the sum of —— pounds and no more. *As witness* our hands this ——— day of ———, 1775.

S. M.
D. L.

After the goods are sold for the best price you can get for the same you must deduct the arrears of rent and all reasonable charges; and the overplus (if any) *must be paid or applied to the tenant's use.*

The Form of a notice from the Tenant, where he requires a further Time for the Payment of the Rent, &c.

Mr. *T. C.*

I HEREBY desire you will keep possession of my goods which you have this day distrained for rent due from me to you, in the place where they now are, being in, *(the premises where the distress was made, which must be described)* and I will pay the man for keeping the said possession. *As witness* my hand this —— day of ——, 1775.

A. B.

If the sheriff is in possession of the goods of a tenant on an execution, the landlord need not make a distress, but should forthwith serve him with the following notice.

Notice to the Sheriff when in Possession on an Execution.

To *J. W.* and *F. B.* } Esqrs. Sheriff of *Middlesex.*

TAKE notice that there is now due from *A. B.* the person to whom the goods belong you are now in possession of, by virtue of his Majesty's writ of *fieri facias, &c. returnable (here mention the writ and return)* the sum of —— pounds, for *one year*'s rent due at *Michaelmas-day* last. *As witness* my hand this ——— day of ———, 1775.

F. G. Landlord of the said premises.

The

The man in possession of the goods, &c. is to be paid two shillings and six-pence per day, if the tenant keeps him; and three shillings and six-pence if he keeps himself.

Modern adjudged Cases relating to Distress.

AN action of trespass brought for a distress made under *stat.* 2 *W. & M.* held good. 4 *Mod. Rep. p.* 231.

If the cattle of a stranger are distrained for rent, after having been so long on the land as to have *laid down* and *risen again to feed*, notice must be given either to the owner of the goods, or to the tenant of the lands so distrained on. 4 *Mod. Rep. p.* 394, 395.

The tackle of a ship is not distrainable of *common right* for *toll*; but by custom it may; the law making a difference between the distress which is allowed for *rent*, and that for a *toll*. 5 *Mod. p.* 362.

On a distress being made for rent, where part of the rent distrained for is due, and part not, on a *rescue* made of such distress, the person who distrains can never recover damages for that part which is not due, though *rescued*. *ibid. p.* 366.

A distress may be made on a tenant of part of an house before quarter-day, by virtue of a general warrant for a *parish-rate*. 6 *Mod. Rep. p.* 214.

If a tenant removes from that parish to another, in the same county, he may be distrained on for such rate by warrant from the justices. *ibid.*

If he removes out of the county, there the remedy against him for such rate fails. *ibid.*

If a landlord seizes part of his tenant's goods for rent in arrear, in the name of the whole goods on the premises, this is a good seizure of the whole. 6 *Mod. Rep.* 215.

By *stat.* 2 *W. & M. cap.* 5. if a landlord or his bailiff seizes goods, they must be immediately removed, except it be *hay* or *corn*. *ibid.*

Distresses on *penal statutes* must be levied by warrant of a justice of peace. *ibid.* 83.

If a *second* distress is made on a tenant for the same rent, his remedy is by *writ of recaption*. 7 *Mod. Rep. p.* 18.

On a diſtreſs being made of his live ſtock, if the ſame eſcapes, the owner can have no remedy againſt the perſon who diſtrains by action of damages. 11 *Mod. Rep.* p. 21, 24.

A diſtreſs taken in two different diſtricts may be ſold in either, after giving the party notice, being an entire diſtreſs, which cannot be ſevered. 12 *Mod. Rep.* p. 76.

A diſtreſs taken in two counties may be appraiſed by the authority of the officer in one county. 1 *Ld. Raym.* p. 55.

A diſtreſs taken in two places, for one cauſe, ought to be impounded together. *ibid.*

Perſonal notice of a diſtreſs anſwers the intent of the ſtatute. *ibid.*

Notice to the owner of the goods taken on a diſtreſs, is ſufficient. *ibid.* 54.

The goods belonging to a ſhip may be diſtrained for the *port-duties* of goods ſhipped on board ſuch ſhip. *ibid.* 384, 385, 386.

If a diſtreſs for *damage-feaſant*, i. e. *doing damage*, dies in the pound, or eſcapes, they cannot be taken; but if for rent, the party may diſtrain again.

A reaſonable diſtreſs may be made to inforce an appearance in an inferior court. And if ſuch goods are *reſcued*, the ſteward of the *inferior court* may ſet a fine on the party; but the officer levying ſuch fine may not break open the door.

If on a diſtreſs made of live cattle, the ſame *eſcape* out of the pound, the party cannot bring an action of *treſpaſs* for the *eſcape*, unleſs it appears it was without default.

If cattle, after they are diſtrained, are put in an open pound, and there die, the perſon who diſtrained may bring his action for the rent, or may diſtrain again, and if they are ſtolen thereout he has the ſame elective remedy. But while goods, cattle, or any other thing are diſtrained, it is a *bar* againſt bringing any action of *treſpaſs*.

On a diſtreſs made of live ſtock, the perſon who diſtrains is not obliged to keep them in the *common pound*, but in an *open pound*; for the pound where the cattle are put, is deemed in *law* the pound belonging to the perſon who diſtrains, though on another man's ſoil; and if broke open, or any injury ariſes to the perſon who diſtrains, an action lies againſt the party ſo offending.

If

If cattle taken on a distress are put into an *open pound*, and such cattle *escape* thereout without the person who distrains being the cause thereof, the person who distrains may have his action of *trespass*.

Where lands lie in two counties not contiguous, and are demised or let on lease together, a distress for rent of the same made on live stock in one county cannot be driven into another. *ibid.* 55.

If things taken on a distress are sold at the appraised price, the law will intend that they are sold at the best price. *ibid.*

An illegal distress may be *rescued* before it it is impounded, but not afterwards. *ibid.* 105.

Cattle that *escape* into a tenant's land, without the default of the owner of such cattle, are not distrainable for rent due by such tenant, until they have been so long on the land as to have *lain down and risen again to feed*. *ibid.* 169.

By *stat.* 32. *Hen.* 8. *c.* 37. an executor of a tenant for life of a rent-charge may distrain for the arrears of such rent-charge.

Cattle distrained for rent in arrear must be returned on payment of such arrears, though such cattle have been returned *irrepleviseable*. *ibid.* 643.

If the party distrained on makes a tender of the damages, the goods distrained ought to be discharged. *ibid.* 719.

A *writ of withernam* ought to be staid on tender of the damages assessed. *ibid.* 720.

The party distrained on may bring an action of *detinue*, if after a tender of the arrears the goods distrained are detained, though after a return, there such distress is *irrepleviseable*. *ibid.*

Cattle distrained for rent must not be tied up in the pound. *ibid.*

No action lies after a distress is made for the same distress, unless the cattle so distrained die or escape through the defendant's neglect. *ibid.*

By *stat.* 8 *Ann.* if goods are taken in execution, the landlord is entitled to a year's rent and no more. *ibid.*

The executor or administrator of a landlord has the same righe under the *equity* of *stat.* 8 *Ann.* it being an interest vested. *Fortescue, Rep.* 360. *Strange*, 214.

A landlord has no remedy against the sheriff for the rent in arrear, where the sheriff comes in under an execution, if he does not make his demand for such arrears

before the removal of the goods so taken in execution. *Strange, vol.* 1. *p.* 97.

When an execution comes into an house where there is a year's rent or under due, the same must be paid by the sheriff to the landlord of such premises, without any deduction whatsoever. *ibid. vol.* 2. *p.* 763.

The ground landlord cannot come in for his rent in arrear on an execution against the under lessee or tenant of such premises. *ibid.* 787.

Where there are two executions against a tenant's goods, and there are *two years* rent due to the landlord, he cannot have the *two years* rent under such executions. *ibid.* 1024.

The landlord, having made a distress, must remove the goods at the end of the *five days* after by the *statute*, or he is a trespasser, and an action of *trespass* will lie against him. *ibid.* 717.

An action of trespass does not lie for making an *excessive* distress, where the entry made for making such distress was lawful; but such action will lie if the entry is not lawful. *ibid.* 851.

Where there are two parcels of land distinctly let, the landlord cannot make a joint distress for both rents. *ibid.* 1040.

If a landlord makes a distress of cattle, and impounds them in another county, this act will not make him a *trespasser*, so as to ground an action of *trespass* against him. *ibid.* 1272.

If the *outer* door of an house is open, the landlord or his bailiff may justify the breaking open the *inner* door to make a distress for rent. *Cases temp. Lord Hardwicke, p.* 168.

By *stat.* 43 *Eliz.* beasts of the plough are distrainable for poor's rates, although there be other goods on the premises more than sufficient to answer the rent in arrear. *Bur. vol.* 1. *p.* 587, 588.

A distress for an entire duty shall not be split, nor shall a distress be taken for part thereof at one time, and for another part thereof at another time, because that would be oppressive, which the law will not countenance. *ibid.* 589.

Nor can the administrator of the landlord distrain within *stat.* 8 *Ann. c.* 14. *ibid.* 212.

If a seizure be made for the whole arrears, *&c.* and the person who distrains has only mistaken the value of the

the goods, he may complete such seizure by a second distress, provided the same be for the same sum due and in arrear. *ibid.* 590.

For an *excessive* distress, a general action of *trespass* cannot be maintained, the party's remedy must be by a special action grounded on the statute of *Marlbridge. ibid.* 590.

An horse bringing goods to market, goods brought to market to be sold, goods on a wharf or warehouse for exportation, goods in the hands of a factor, goods delivered to a carrier to be carried for hire, and wool in a neighbour's barn, are goods of a *third* person, which cannot be distrained by a landlord for rent, though found on his premises. *ibid. v.* 3. 1489.

Goods left at an inn or other place, a chariot standing in a coach-house belonging to a common livery-stable, may be distrained by the landlord for rent in arrear, though the property of a *third* person; so may goods or houshold furniture of a lodger or inmate. *ibid.* 1500.

If a lessee for years assigns his term, he cannot afterwards distrain for the rent. *Wilson's Rep. part* 2. *p.* 375.

Of REPLEVINS.

What they are.

A REPLEVIN, (*replegiare, Latin*, is compounded of *re* and *plegiare, viz.* to re-deliver upon pledges or sureties) is granted upon a distress, and is a re-delivery of it, that the thing distrained may remain with the first possessor, upon security given by him to try the right with the detainer, and to answer in a course of law for the same.

How Goods may be replevied.

Goods may replevied in two ways, *viz.* by *writ*, which is by the *common law*; or by *plaint* in the sheriff's court, which is by the *statute*: and the sheriff ought to take two sorts of pledges; one by the *common law, viz. plegii de prosequendo*; and another by the *statute, viz. plegii de retorno habendo.* And the party desiring it, and giving such security as is by law required, shall, upon any

distress made for rent or otherwise, have his writ of *replevin*. *Co. Lit.* 145. *b.*

For the ease and speedy remedy of the country, in case of distress where the cattle be pounded, the *statute* has provided, that every sheriff at his own *county-day*, or within *two months* after he *first* receives his patent, is to depute and proclaim in his *shire-town four* deputies to make replevins within his county, which must reside within twelve miles one of another, on pain of five pounds a month for every month they are wanting. So that when any man's goods are distrained or impounded, he may repair to one of these sheriff's deputies for that purpose; and there he may have a replevin *(upon plegii de retorn' habend' si, &c.)* to cause the goods distrained to be delivered to the owner. By the writ *de replegiare facias*, which is at the *common law*, the sheriff is commanded, taking the pledges of prosecution, to re-deliver the goods distrained to the owner: but since the other, *viz.* by *plaint* in the sheriff's court, is the reader and easier way, this writ is now almost out of *use*.

In a replevin, he whose goods are distrained or impounded becomes the plaintiff, and declares against the other for unjustly taking and detaining his goods or cattle, *contra vad' et pledg', &c.*

How the Party is to act if the Distress is carried out of the County.

If a landlord distrains, and carries the same out of the county, so that the sheriff upon a replevin cannot re-deliver the goods, then, upon the sheriff's return of the replevin, the party may have a *writ of withernam* directed to the sheriff, to take as many of the lord's beasts, or as much goods in his keeping, till he have made a deliverance of the first distress; and if the goods or cattle be conveyed to a *fort* or *castle*, the sheriff may command the power of the county, and beat it down. *Rastall, Tit. Distress*, 7.

If a distress be made in a *franchise* or *bailiwick*, the sheriff is to direct his replevin to the bailiff thereof, to deliver them upon pledges, *&c.* and if he makes no answer, or returns that he will make no deliverance, or the like, then the sheriff may enter into the liberty, and make deliverance;

rance; and if the distress was taken without the liberty, and impounded within the liberty, then the sheriff may enter and make deliverance; and need not first to make out a warrant to the bailiff of the liberty. *Stat. Marlebr. c.* 21. *Westm.* 1. *c.* 17. 2 *Co. Inst.* 140, 194.

The plaintiff in replevin ought to have the property of the goods in him at the time of the distress made; for if the defendant claims property, the sheriff cannot replevy the distress, but the property must be tried by a writ *de proprietate probanda.*

Several Persons cannot join in a Replevin.

If the goods or cattle of several men be distrained, they cannot join in a replevin, but every man must have a several replevin; for in a replevin it is a good plea to say, the property is to the plaintiff and to a stranger; and where there be two plaintiffs, that the property is to one of them. *Co. Lit.* 145.

If a man take a distress in one county, and drive it into another, the owner of the cattle may sue out a replevin in which county he pleases. *Comp. Ait.* 131.

If a lord distrain his tenant wrongfully, although the cattle be come back again to the owner, yet the tenant may have a replevin against the lord, because he cannot have an *action of trespass* against him.

In Replevin, the Party must particularly state every Thing taken.

The plaintiff in a replevin ought to be careful in giving his instructions for it, for he must be certain in setting down the number and kinds of the cattle or other things which are distrained, otherwise the replevin is not good.

Who is Defendant in Replevin.

The avowant is the defendant in a replevin; that is, he that made the distress; and when he justifies in his plea

for what cause he distrained, that plea is called his avowry.

What is an Avowry.

If a landlord distrains for rent in arrear, and the tenant or owner of the cattle brings a replevin, and declares against him for unjustly taking and detaining his cattle, and the defendant justifies he took it in his own right, and so shewing the cause of his taking in his plea, this is an avowry.

Error of a judgment in *C. B.* in replevin for cattle taken 26*th September*, the defendant avowed the taking as a distress for rent reserved on a lease for years, which was made under the title of Christopher, late Duke of Albemarle, and for the rent of two years and an half, ending at *Michaelmas*, 29*th September*, *&c.* he avowed. And this was now assigned for error; for the distress was made before *Michaelmas* when the rent was in arrear; and notwithstanding that, it was urged, that the distress was well made for the rent of *two years*; yet the court, without difficulty, reversed the judgment; for the avowry is for one intire rent, and the judgment accordingly; but before judgment the avowant might have abated his own avowry for the half year, and prayed judgment for the residue, and this would have been good. Judgment reversed, *nisi causa*. But afterwards the record was amended in the C. B. *Mich.* 9 *W.* 3. *Richards* v *Corneford*, *in B. R. Comyn's Rep.* 42. *pl.* 26. *Ld. Raym.* 255.

When the plaintiff in replevin makes conusance and avows that the property is in himself, it seems to be sufficient without a traverse. *Comyn's Rep.* 247. *pl.* 137.

In Replevin the Defendant may avow or make conusance generally.

By *Stat.* 11 *Geo.* 2. *it is enacted*, That whereas great difficulties often arise in making avowries or conusance upon distresses for rent, quit-rents, reliefs, heriot and other services; be it enacted, that after the 24*th day of June, one thousand seven hundred and thirty-eight*, it shall and may be

be lawful to and for all defendants in replevin to make conusance generally, that the plaintiff in replevin, or other tenant of the lands and tenements whereon such distress was made, enjoyed the same under a grant or demise at such a certain rent, during the time wherein the rent distrained for was incurred, which rent was then and still remains due; or that the place where the distress was taken was parcel of such certain tenements, held of such honour, lordship or manor, for which tenements the rent, relief, heriot, or other service distrained for was at the time of such distress and still remains due, without further setting forth the grant, tenure, demise, or title of such landlord or landlords, lessor or lessors, owner or owners of such manor; any law or usage to the contrary notwithstanding; and if the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have judgment given against him, her, or them, the defendant or defendants in such replevin shall recover double costs of suit. See 2 *Wilson*. 208, 209, *&c.*

Sheriffs to take Bonds from the Plaintiffs in Replevins with two Sureties.

To prevent vexatious replevins of distress taken for rent, *it is enacted*, that after the said *twenty-fourth day of June, one thousand seven hundred and thirty-eight*, all sheriffs and other officers having authority to grant replevins may and shall, in every replevin of a distress for rent, take in their own names, from the plaintiff, and two responsable persons as sureties, a bond in double the value of the goods distrained, (such value to be ascertained by oath of one or more credible witness or witnesses not interested in the goods or distress; which oath the person granting such replevin is hereby authorized and required to administer) and conditioned for prosecuting the suit with effect, and without delay; and for duly returning the goods and chattels distrained, in case a return shall be awarded before any deliverance be made of the distress; and that such sheriff or other officer as aforesaid, taking any such bonds, shall, at the request and costs of the avowant or person making conusance, assign such bond to the avowant or person aforesaid, by indorsing the same, and attesting it under his hand and seal, in the presence of two or more credible witnesses; which may be done without any stamp,

ſtamp, provided the aſſignment ſo indorſed be duly ſtamped before any action brought thereupon; and if the bond ſo taken and aſſigned be forfeited, the avowant or perſon making conuſance may bring an action, and recover thereupon in his own name; and the court where ſuch action ſhall be brought may, by a rule of the ſame court, give ſuch relief to the parties upon ſuch bond as may be agreeable to juſtice and reaſon; and ſuch rule ſhall have the nature and effect of a defeazance to ſuch bond.

The Form of the Replevin Bond by Stat. 11 *Geo.* 2.

KNOW ALL MEN by theſe preſents, that WE *C. D.* of, *&c.* Eſq; *E. F.* of the ſame town and county, Gent. and *G. H.* of, *&c.* in the ſame county grocer, are held and firmly bound to *J. K.* Eſq; ſheriff of the county aforeſaid, in the ſum of ——— pounds of lawful money of *Great Britain*, to be paid by the ſaid *J. K.* or his certain attorney, executors, adminiſtrators or aſſigns; *For* which payment to be well and truly made, we bind ourſelves, and each of us binds himſelf, for the whole and in groſs, our heirs, executors and adminiſtrators, firmly by theſe preſents, ſealed with our ſeals, dated this —— day of ———, 1775, and in the *fifteenth* year of the reign of our Sovereign Lord *George* the *Third*, by the Grace of God of *Great Britain*, *France* and *Ireland*, *King*, *Defender of the Faith*, *and ſo forth*.

NOW *the condition of this obligation* is ſuch, that if the above bounden *C. D.* ſhall and do appear at the next *county-court*, to be holden for the county of ———, at the town of ———, on the ——— day of ——— next, and there proſecute with effect his ſuit, which he has commenced againſt *J. W.* for the taking and unjuſtly detaining *four cows*, *(or as the caſe may be)* the goods of him the ſaid *C.* and to make return of the ſaid goods, if a return of the ſame ſhall be adjudged; that then this preſent obligation ſhall be void and of none effect, or elſe to remain and be in full force and virtue. *Sealed*, *&c.*

Note: *If the tenant in conſequence of having entered into the ſaid bond does not proſecute his ſuit with effect, the landlord may, on application to the ſheriff of the county or city where ſuch diſtreſs is made, in four days, excluſive of the time*

time limited in such bond for the tenant to prosecute his action in replevin, have an assignment thereof, and proceed thereon against the tenant and his sureties in the same manner that the law allows a plaintiff, to proceed against a defendant and his bail on a common bail-bond.

The Form of an Assignment of a Replevin-bond from the Sheriff.

KNOW ALL MEN by these presents, that I *J. K.* Esq; sheriff of the county of ———, *have*, at the request of the above-named *J. W.* the avowant in this cause, assigned over unto him the said *J. W.* this replevin-bond, pursuant to the act of parliament in that case made and provided. IN WITNESS whereof I have hereunto set my hand and seal of office this ——— day of ——, in the year ——. *J. K.*

Sealed and *delivered* (being first duly stamped) in the presence of }

A DECLARATION in REPLEVIN.

Trinity-term, 15 *Geo.* 3.

K. B.

LONDON, to wit, *C. D.* was summoned to answer *A. B.* of a plea, wherefore he took the goods and chattels of the said *A. B.* and them unjustly detained against gages and pledges until, &c. *And whereupon* the said *A. B.* by *R. R.* his attorney, complains that the said *C. D.* on the —— day of ——, (*any day after the distress made, and before the suit commenced*) in the —— year of the reign of our Sovereign Lord *George* the Third, now King of *Great Britain*, &c. at *London*, in the parish of *St. Mary le Bow*, in the ward of *Cheap*, to wit, in a certain place there called ———, took the goods and chattels following, to wit, (*here insert the things taken, if known, particularly; if not, a sufficient quantity of different sorts of houshold furniture to cover the same*) belonging to him the said *A. B.* and unjustly detained the said

things ſo taken againſt ſureties and pledges until, *&c.* *Whereby* the ſaid *A. B.* ſays, that he is injured, and hath ſuſtained damage to the value of —— pounds, and therefore he brings ſuit, *&c.*

Avowry for Rent in Replevin.

AND the ſaid *C. D.* by *M. T.* his attorney, comes and defends the force and injury when, *&c.* and well avows the taking the ſaid goods and chattels in the ſaid place in which, *&c.* and juſtly, *&c.* becauſe he ſays, that the ſame place, in which the taking the ſaid goods and chattels is ſuppoſed to be done, contains, and at the ſame time, when the taking the ſaid goods and chattels is ſuppoſed to be done, contained a certain meſſuage or tenement, with the appurtenances, in the ſaid ſtreet called ———, in the pariſh of *St. Mary le Bow*, in the ward of *Cheap*, in the city of *London* aforeſaid, of which ſaid meſſuage or tenement, with the appurtenances, before the ſaid time in which, *&c.* one *E. F.* was ſeiſed in his *demeſne* as of fee; and being ſo ſeiſed, the ſaid *E. F.* before the ſaid time when, *&c.* to wit, on the —— day of ——— in ——— year of the reign of our Sovereign Lord *George* the Third, at *London* aforeſaid, in the pariſh of *St. Mary le Bow*, in the ward of *Cheap* aforeſaid, demiſed the ſaid meſſuage or tenement, with the appurtenances, to the ſaid *C. D. To hold* to him the ſaid *C. D.* and his aſſigns, from the —— day of ——— then laſt paſt, before the date of the ſaid leaſe, for the term of —— years from thence next enſuing and fully to be compleat and ended, by virtue of which ſaid demiſe the ſaid *C. D.* was poſſeſſed of the ſaid meſſuage or tenement, with the appurtenances aforeſaid; and being ſo thereof poſſeſſed, he the ſaid *C. D.* before the ſaid time when, *&c.* to wit, on the —— day of ———, in the ſaid —— year of the reign of our Sovereign Lord *George* the Third, demiſed the ſaid meſſuage or tenement, with the appurtenances, to the ſaid *A. B.* to hold the ſame from the —— day of —— then next following, for the term of —— years from thence next enſuing, and fully to be compleat and ended: *Yielding*, therefore, for the ſaid year to the ſaid *C. D.* or his aſſigns, the rent of —— pounds, of lawful money, *&c.* at the four uſual times of payment of rent in the year, to wit, on the —— day of ——, the

—— day of ——, the —— day of ——, and the —— day of ——, by even and equal portions: By virtue of which ſaid demiſe, the ſaid *A. B.* entered into the ſaid meſſuage or tenement, with the appurtenances, and was poſſeſſed thereof and occupied the ſaid meſſuage or tenement, with the appurtenances, for the ſpace of three quarters of a year; and becauſe the ſum of —— pounds, of the ſaid rent, after the demiſe ſo made for the time aforeſaid, on the —— day of —— laſt paſt, and before the taking the ſaid goods and chattels, was in arrear and unpaid to the ſaid *C. D.* the ſaid *C. D.* well avows the taking the ſaid goods and chattels in the ſaid place in which, *&c.* and juſtly, *&c.* for the ſaid —— pounds, being in arrear to the ſaid *C. D.* in form aforeſaid, as in the ſaid meſſuage or tenement, with the appurtenances, bound and liable to the diſtreſs of the ſaid *C. D.* in form aforeſaid; and this he is ready to verify: *Wherefore* he prays judgment, and a return of the ſaid goods and chattels to be adjudged to him, *&c.*

A Plea in Bar to an Avowry that there is no Rent in Arrear.

AND the ſaid *A. B.* ſays, That the ſaid *C. D.* for the reaſons before alledged, ought not to well avow the taking the goods and chattels in the place in which, *&c.* becauſe he ſays, That the ſaid —— pounds, or any part thereof of the rent aforeſaid, at the ſaid time when, *&c.* was not in arrear or unpaid to the ſaid *C. D.* as the ſaid *C. D.* in his ſaid avowry has above alledged; and this he prays may be enquired of by the country: And the ſaid *C. D.* does ſo likewiſe: THEREFORE it is commanded to the ſheriff, that he cauſe to come before our Lord the King, at *Weſtminſter*, from, *&c.* *(the return of the venire)* twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well. *&c.* the ſame day is given to the ſaid parties there, *&c.*

Note: *The above declaration, plea, replication, and award of venire, compleat the iſſue in replevin, only adding thereto a memorandum to the declaration, and plea, if neceſſary, as in a common action.*

In

In making up the record in replevin, you add placita's as in a common action, the jurata the same, mutatis mutandis.

If judgment goes by default, or the plaintiff in replevin is nonsuited, you must execute a writ of inquiry.

The Form of a Writ of Inquiry in Replevin, where Judgment is for Defendant on a Nonsuit.

GEORGE the Third, *&c.* TO the sheriffs of *London*, greeting: WHEREAS *C. D.* was summoned, *&c.* *(as in the declaration and plea, or avowry, to the end thereof)* and the same day was given to the said *C. &c.* on which day came the said *C.* into our court before us at *Westminster*, and the said *A.* although solemnly called, did not come, nor further prosecute his writ aforesaid; *Therefore* it is considered that the said *A.* take nothing by his writ aforesaid, but be in *mercy* for his false claim thereof; and that the said *C.* do go thereof without day, *&c.* *Therefore* we command you, that according to the form of the statute in such case lately made and provided, by the oath of twelve good and lawful men of your county, you diligently inquire how much of the yearly rent aforesaid, at the same time of taking and distraining of the goods and chattels aforesaid, was in arrear and unpaid; and how much the goods and chattels aforesaid, so as aforesaid taken and distrained were worth, according to the true value of the same, and the inquisition, which, *&c.* send to us from *(the return of the inquiry)* under your seals, and the seals of those by whose oath you shall take that inquisition, together with this writ. WITNESS, *William* Lord *Mansfield*, at *Westminster*, *&c.*

Adjudications on Matters of Replevin.

AS replevin is *vicontiel* and determinable in the inferior court where the suitors are judges both of the law and the fact, the law has appointed two writs to remove such causes out of inferior courts to superior, *viz.* The *writ of pone* and *recordari.*

The

The *writ of pone* is uſed when the proceedings are by *writ of replevin*, for that writ gives the ſuperior court authority to proceed in ſuch ſuit or plaint, whether the proceedings below are recorded or not, as the ſuperior court wants no record from below, when they have the King's writ with them.

The *writ of recordari* is a writ to record the preceedings, and when recorded to return the ſame into the *King's Bench* or *Common Pleas*, as the caſe may be. It gives inferior courts authority to record proceedings that were not of record before; and if the replevin was by plaint, it muſt be removed by *writ of recordari*, becauſe the court muſt have their authority by proceedings returned to them of record.

A plaintiff in replevin may remove his *writ of replevin* or *plaint* out of an inferior court, either by *pone* or *recordari*, without ſhewing any cauſe for ſuch removal, as it is an act in his own delay; but a defendant in replevin cannot, without ſhewing a ſufficient cauſe, which muſt appear upon record.

There are ſeveral cauſes of removal at *common law*; when removed, the cauſe is inſerted in the writ after the *teſte* thereof.

If the plaint be removed by defendant by *pone* at the day in bank, the plaintiff ſhall be demanded under peril of a *nonſuit*; and if he makes default, a return is to be awarded to the ſaid writ, but no proceſs againſt him. If the plaintiff appears and the defendant makes default, a *writ of diſtringas* ſhall iſſue againſt him, and on the ſame being returned *nulla bona*, then a *capias* and proceſs of *outlawry*. If the plaint be removed by the plaintiff by *pone* or *recordari*, if he makes default, he ſhall be *non-ſuited*, but if the defendant makes default, then ſhall iſſue againſt him a *pone per vadios*, and ſo proceſs of *outlawry*.

The Form of the Writ of Pone.

GEORGE the Third, *&c.* TO the ſheriff of *Middleſex*, *greeting:* Put by upon the petition of the petitioner, on (*the return*) wherefoever we ſhall then be in *England*,

England, the plaint which is in your county, by our writ between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as it is said, and summon by good summoners the aforesaid *C.* that he be then there to answer the aforesaid *A.* hereof; and have there the summoners and this writ.

WITNESS, *&c.*

The Form of the Writ of Recordari.

GEORGE the Third, *&c.* To the sheriff of *Middlesex, greeting*: WE command you, that you cause to be recorded in your full county the plaint which is in the same county, without our writ, between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as it is said, and have the record before our justices at *Westminster (the return)* wheresoever, *&c.* under your seal, and the seals of four lawful suitors of the same county, of those who were present at the recording it, and prefix the same day to the parties that they be then there, to proceed in that plaint according to justice, and have there the names of the said four suitors, and this writ. *Witness, &c. (Let this writ be executed, if the aforesaid* A. *petitions for it, and otherwise not.* See *F. N. B.* 162. *Edit.* 1755. 4*to.*

Observations.

THESE writs issue out of *Chancery*, and are made out by the proper *cursitor* of the county, on leaving with him a *præcipe* for that purpose.

If the plaintiff in replevin has judgment on a verdict, the jury assesses the damages as in a common action; if on a demurrer, he must sign an interlocutory judgment, and execute a writ of inquiry, before he can sign final judgment or take out execution.

If the avowant or defendant has judgment on a verdict, damages are assessed as aforesaid; if on a demurrer, or on *non pros*, an enquiry must be executed to obtain such judgment.

If

If in replevin the plaintiff is *nonsuited*, he cannot have a new replevin, but must be relieved by the *writ of second deliverance.*

If the plaintiff does not prevail in this writ, the *writ of retorno habendo* is awarded for the avowant *irrepleviſable*; that is, that the avowant ſhall detain and keep the things taken, till the rent or other duty for which they were taken is paid; nor ſhall the plaintiff ever again diſturb the defendant's poſſeſſion by replevin or *writ of ſecond deliverance*, though if the plaintiff tenders the rent the defendant muſt reſtore the goods, *&c.* or the plaintiff may recover the ſame by an *action of detinue.*

The *writ of ſecond deliverance* is a *ſuperſedeas* in law to the ſheriff againſt the *writ of retorno habendo*, and to prevent his executing the ſame. If it comes to him after the return is made, it is in the nature of a new replevin.

If the defendant in replevin cannot get the goods, *&c.* of the plaintiff on the *writ of retorno habendo*, and the ſheriff returns the ſame *elongata*, the defendant muſt ſue out a *ſcire facias* to ſummon the bail, which brings them into court, to ſhew cauſe why the defendant ſhould not have a return of their goods, *&c.* and if no cauſe ſhewn by them, he has a writ to have return of their goods, *&c.* inſtead of the plaintiffs; and if their goods, *&c.* prove inſufficient, and the ſheriff returns a *nihil* on this writ, the defendant may have a *ſcire facias* againſt the goods, *&c.* of the ſheriff.

The defendant has another remedy againſt the plaintiff, where the ſheriff returns *elongata* on the *writ de retorno habendo*, *viz.* a *capias in withernam* againſt plaintiff's goods, *&c.*

By ſtat. 17 *Car.* 2. *it is enacted*, That where a plaintiff in replevin ſhall be nonſuited before iſſue joined or judgment on demurrer for the avowant in any court of record, the defendant making a ſuggeſtion thereof in nature of an avowry for ſuch rent, *&c.* that the court may be aſcertained of the cauſe of the diſtreſs; the court on his prayer ſhall award a writ, *&c.* to inquire of the ſum in arrear at the time of making the diſtreſs and the value of the goods,

&c. taken, and on return of the inquisition the defendant shall have judgment to recover against plaintiff the arrears of rent, in case the goods, *&c.* taken amount to the same, or so much as the value of the said goods, *&c.* amount to, and full costs of suit, and shall have execution thereon by *writ of fieri facias* or *elegit*, or otherwise.

The *writ of recaption* lies where the defendant distrains again on the plaintiff for the same rent, and if he is convicted thereof, he shall be fined to the *King*.

On the *writ of recaption* the defendant cannot avow as in replevin, because an avowry is to have a return of the pledges; but the defendant must justify as in *trespass*, and unless he can support such second taking, he will be deemed a *trespasser*.

On the *writ of recaption* the tenant in his declaration must aver, that the second distress was taken for the same cause as the first, or he fails in making out his title to the said writ, and consequently cannot punish the landlord for such second distress.

The Form of the Writ of Retorno Habendo against the Plaintiff by Default.

GEORGE the Third, *&c.* To the sheriffs of *London*, *greeting:* WHEREAS *A. B.* lately in our court before us at *Westminster*, was summoned to answer to *C. D.* in an action, wherefore he took *(the goods, &c. taken)* the goods, *&c.* of him the said *C. D.* and unjustly detained them against sureties and pledges, *&c.* as he alledged; and the said *C.* afterwards made default in our said court before us, wherefore it was considered in our same court before us, that he and his pledges for prosecuting should be amerced, and that the said *A.* might depart the court without day, and should have a return of the goods, *&c.* aforesaid: *Therefore* we command you, that without delay you return the said goods, *&c.* to the said *A.* and you shall not deliver them at the complaint of the said *C.* without our writ, which shall expressly mention the said judgment, and in what manner you execute this writ, you shall make appear to us, *(the return)* wheresoever, *&c.* and

and have you there this writ. *Witness*, *William* Lord *Mansfield*, at *Westminster*, *&c.*

The Form of the Writ of second Deliverance.

GEORGE the Third, *&c.* To the sheriffs of *London*, *greeting*: If *C. D.* shall give you security that he will prosecute his claim, and also return the goods, *&c.* which in our court before us were lately adjudged to *A. B.* through the default of the said *C.* WE command you, that if by means of our *writ de retorno habendo*, lately directed to you for that purpose, you have made a return of the said goods, *&c.* to the said *A. B.* then do you cause them to be re-delivered to the said *C. D.* and by sureties and safe pledges compel the said *A.* that he be before us on (*the return*) wheresoever, *&c.* to answer to the said *C. D.* for taking and unjustly detaining the said goods, *&c.* aforesaid; and have you there the names of the pledges and this writ. *Witness*, *William* Lord *Mansfield*, *&c.*

The Sheriff's Return to the foregoing Writ.

BY virtue of this writ to me directed, I have caused to be re-delivered to the within-named *C. D.* his goods, *&c.* within-mentioned, as I am within commanded to do. The pledges within-named are *John Doe* and *Richard Roe*.

The answer of
John Wilkes, Esq;
and
Frederick Bull, Esq; } Sheriff.

The Form of the Writ of Capias in Withernam.

GEORGE the Third, *&c.* To the sheriff of *Essex*, *greeting*: WHEREAS we lately commanded you by our writ, That WHEREAS *C. D.* had been attached by our *writ of second deliverance* to appear in our court before us to answer *A. B.* in an action, wherefore he took the cattle of the said *A.* and unjustly detained them against sureties and pledges: And the said *A. B.* should depart

hence without day, and that the ſaid *A. B* and his pledges of proſecuting ſhould be amerced: And that the ſaid *C. D.* ſhould have a return of the goods, *&c.* aforeſaid *irreplegiable*, and that you without delay ſhould make a return of thoſe goods, *&c.* to the ſaid *C. D.* to be detained by him *irreplegiable*, and in what manner you ſhould execute that writ, you ſhould make known to us, *(the return)* wherefoever, *&c.* and you at that day returned to us, that the goods, *&c.* aforeſaid, were *eloigned* by the ſaid *A. B.* to places unknown to you, ſo that you could not return or deliver thoſe goods, *&c.* to the ſaid *C. D.* as you was commanded by the ſaid writ: *Therefore* we command you, that you take ſo many goods, *&c.* of the ſaid *A. B.* to the value of the goods, *&c.* aforeſaid, before taken by the ſaid *A. B.* in *withernam*, and deliver them to the ſaid *C. D.* to be kept by him *irreplegiable*, until you can make a return of thoſe goods, *&c.* before taken to the ſaid *C. D.* and in what manner you ſhall execute this our mandate, do you make appear to us on *(the return)* wherefoever, *&c.* and that you cauſe further to be done therein what of right, and according to the laws and cuſtoms of this our kingdom of *Great Britain* you ſhall ſee meet to be done. WE alſo command you, that if the ſaid *C. D.* ſhall make you ſecure of proſecuting his claim, and returning the chattels aforeſaid, if a return thereof ſhould be adjudged, then do you compel the ſaid *A. B.* by ſureties and ſafe pledges, that he be before us *(the return)* wherefoever, *&c.* to anſwer as well to us for the contempt as to the ſaid *C. D.* for his damages and injury done him in this caſe; and have you there this writ. *Witneſs William* Lord *Mansfield*, at *Weſtminſter*, *&c.*

Adjudications on Matters of Replevin.

IF the defendant be without an addition in the plaint, he can have none in the *writ of recordari*, yet he may be *outlawed*. *Stat.* 2 *H.* 5.

The plaintiff in replevin may declare without a rule from the defendant to force him ſo to do. If the defendant does not appear, the way to compel his appearance is by *attachment*.

On

On the cause being removed out of the county court, the plaintiff must declare *de novo*. *Ch. Baron. Gilb. Law of Replevins*, *p.* 147.

The general issue in replevin is *non cepit*, but the caption and detention only is in issue by this plea, and not the property. *Ch. Baron. Gilb. Law of Replevins.* 174.

If the *writ of pone* is taken out by the defendant with a summons, the plaintiff is demandable on peril of a *nonsuit*, and so he is where a day is given the defendant. *F. N. B. et Stat.* 21 *H.* 6.

A capias lies against the defendant on his default to appear on a *writ of pone* brought by the plaintiff in replevin by plaint, but not on a *writ of justicies*. *Stat.* 21 *H.* 6.

A record can only be moved out of a court of record by *habeas corpus cum causa* or *certiorari*. *Stat.* 9 *H.* 6.

A *scire facias* is the proper process to bring in the pledges in replevin; it need not be returned to entitle the party to a *writ of capias in withernam*. *Stat.* 5 *H.* 5. *Fitz. Abr. title Process*, *p.* 115.

The sheriff may break open a house to execute a replevin, if denied entrance. 2 *Inst.* 193. *Stat.* 1 *West.* c. 17.

If the plaintiff *be nonsuited* or a verdict against him, the *writ of retorno habendo* may be brought by the defendant; and if the sheriff levies goods on a *writ of withernam*, and will not deliver the same to the defendant, an action lies against him. *Fitz. Abr. title Gage Deliv. p.* 8.

A *writ of second deliverance* was denied in the case of a *nonsuit* for rent. 1 *Ventr.* 64. and in *Mich.* 6 *Geo.* 2.

A replevin is not an action or plaint within *stat.* 8 & 9 *Will.* 3. 3 *Bur.* 1286.

In what cases in replevin the place is material. *Strange* 507.

No

No replevin can be had of goods taken upon a conviction. *Strange* 1084.

EJECTMENT.

What it is.

IT is an action brought by the lessee of a term of years to recover such term when he is ousted thereof. It is now generally used to recover the possession of lands, and supplies the place of many real actions.

How to be brought.

The method to bring this action is to feign a lease and an ejector, and to draw a declaration against such feigned ejector, a copy of which declaration must be delivered to the tenant or tenants in possession of the premises intended to be recovered, with a notice at the bottom thereof for him or them to appear and defend his or their title to such premises; or else that the ejector will suffer judgment to be signed against him by default, whereby the tenant in possession will be turned out of the premises he holds.

On such declaration being delivered in manner aforesaid, it is the duty of the tenant or landlord, if he means to defend his possession or title to the said premises, to enter into a rule of court to become defendant to such action in *ejectment*, in the room of the casual ejector or nominal defendant, and to confess lease, entry and ouster at the trial thereof, and insist on his title only.

The service of a declaration in *ejectment* before the statute 4 *Geo.* 2. might have been on the tenant himself or his wife, *&c.* but now such service is not good, unless tenant himself acknowledges the receipt after it is delivered to plaintiff's attorney, or the person who delivers the same, must make oath that he delivered the same to the tenant in possession, or that the tenant in possession acknowledges the receipt of a true copy of the annexed declaration

declaration, with the notice thereon, which the deponent did then read to the ſaid tenant, and acquainted him with the contents thereof. The *affidavit* muſt be poſitive, that the perſon to whom the declaration was delivered was tenant in poſſeſſion, or that he acknowledged himſelf ſo to be.

Affidavit of the Service of a Declaration in Ejectment.

Holdfaſt *on the Demiſe of* A. B. *againſt* Letgoe.

K. B.

B. *R.* of, *&c.* gentleman, maketh oath that he this deponent did on the —— day of ——— laſt ſerve *C. D.* the tenant in poſſeſſion of the premiſes in queſtion in this cauſe with the declaration hereunto annexed, and the notice there under written, by delivering unto him the ſaid *C. D.* a true copy of the ſaid declaration and notice, and at the ſame time reading over to him the ſaid notice, and acquainting him with the contents or purport of the ſaid declaration and notice.

SWORN, *&c.* *B. R.*

On the ground of this *affidavit*, the plaintiff moves for a rule for judgment againſt the caſual ejector, which is granted, and judgment goes in conſequence, unleſs the real defendant in due time appears and enters into the common rule. The notice at the bottom of the declaration, if the premiſes lie in *London* or *Middleſex*, muſt be made to appear the *firſt* day of the *ſubſequent term*, and muſt be delivered before the *eſſoign* day of ſuch term; for if made *generally*, the defendant will have the whole term to appear in.

If the premiſes in queſtion be in any other *city* or *county* than *London* or *Middleſex*, you make your notice to appear the next term *generally*.

When the Premiſes lie in any other County.

IF premiſes lie in any other city or county than *London* or *Middleſex*, though the declaration be delivered before the *eſſoign* day of *Eaſter* or *Michaelmas* term, yet the

tenant has *four days* after the end of the next issuable terms, *viz. Hilary* or *Trinity*, to appear; and if in a county where the *assizes* are but once a year, the tenant has *four days* after the end of the term next preceeding the *assizes* to appear.

If the houses or lands for which the *ejectment* is brought are empty so that a declaration cannot be delivered or an *affidavit* made, so as to enable the court to grant judgment against the casual ejector, the plaintiff must seal a lease on the premises, *see page* 54 *of this work*, and give rules to plead; and when out, he must make an *affidavit* of the whole matter, on which the court grants judgment against the casual ejector.

If the tenant in possession keeps his door shut, so that he cannot be served with a declaration in *ejectment*, on making this matter appear to the court by *affidavit*, they will grant judgment against the casual ejector. *Nisi*, &c.

When a corporation is lessor of the plaintiff, they must give a *letter of attorney* to some person to enter and seal a lease on the land, which lease must try their title, and then their attorney may proceed in the common method.

Of what Things an Ejectment will or will not lie, and of the Manner of describing the same in the Declaration.

AN *ejectment* lies of a *stable*, as also of an *orchard*, and of a *college*. *Cro. El.* 854. Of a *garden*. 1 *Lev.* 58. It lies of a *boilery of salt*. 1 *Lev.* 114. It lies *pro stagno Yelv.* 143. *Et pro gurgite*. 1 *Inst.* 5. Of a coal mine. *Cro. Jac.* 150. For a *beast-gate*. *Andr.* 106. *Pro prima tonsura*. *Cro. Car.* 262. *Pro herbagio*. *Hard.* 401. *Pro pastura centum ovium*. *Dalis.* 95. For *tithes*. *Andr.* 107. *Pro rectoria*. *Latch.* 62. For *a church*, by the name of *messuage*. *Salk.* 256. Of a *hop-yard*. *Palm.* 337. Of a *house*. *Cro Jac.* 654. Of a *chamber* in the second story of such a house. 3 *Leon.* 210. Of a *close* called *D.* containing three acres of land. *Cro. Jac.* 435. Of *twenty acres of furze and heath*. *Cro. Car.* 179. *Pro quatuor molendinis pro decem acris pisarum*. *Cro. Eliz.* 339. For *common* of *pasture*. 1 *Strange* 54. For *mountains* in *Ireland*.

1 *Strange*

1 *Strange* 71. *De parte domus.* 1 *Strange* 695. For an *alder carr in Norfolk.* 2 *Strange* 1063. Not for a *tenement.* 2 *Strange* 834. 3 *Wilson* 23.

An *ejectment* lies not *de pannagio*, for *pannagium* is but the privilege of taking *pannage.* 1 *Lev.* 213. It lies not of a *rent* or *common appendant.* *Cro. Car.* 202. Nor *de quadam rivulo, & aquæ cursu.* *Yelv.* 143. Nor *de piscaria*, in such a river. *Cro. Car.* 492. Nor *de croftis.* *Styles* 30. Nor of a *kitchen.* *Noy* 109. Nor of a *close.* *Godb.* 53. Nor of *arable* nor *pasture land*, without shewing how much of one, and how much of the other. *Salk.* 254. Nor *pro virgata terra.* *Cro. Eliz.* 339.

Ejectment in *Ireland de castro villa & terris in Kilbrough*, without expressing the number and certainty of acres, is not sufficient. *Yelv.* 118.

It will not lie of the *fourth* part of a meadow without shewing the number of acres the meadow contains. 1 *Lev.* 213.

Ejectment for five closes of land, arable and pasture, called long furlongs, containing ten acres, held ill. *Cro. Car.* 573.

Ejectment in *Durham de mineris carbonum*, not saying how many, but proving it the custom of the place to be so held good. *Salk.* 255.

An *ejectment de uno messuagio sive tenemento* naught. *Cro. Eliz.* 186. 3 *Wilson*, 23.

Ejectment of a messuage or tenement called the *Black Swan*, was held good. 4 *Mod.* 136.

Ejectment for a *messuage* or *burgage*, is good. *Hard.* 173.

An *ejectment* for 100 *acres* of *waste*, or *pro centum acris montis*, naught for incertainty. *Palm.* 100.

For 100 *acres* of *bogg* in *Ireland*, good. *Salk.* 255.

For a *house*, *ten acres of land*, and *twenty acres* of *meadow*, by the name of a house and ten acres of meadow, naught for incertainty, if should be messuage instead of house.

Ejectment

Ejectment for a *manor* should describe the quantity and species of land contained therein. *Lit. Rep.* 301.

For *ten* acres of *wood* and *ten* acres of *under-wood*, good. 2 *Roll. Rep.* 482.

An *ejectment* for a certain place called the *vestry* in *D.* good. 3 *Lev.* 96.

The general *maxim* in laying houses and lands in *ejectment* is, that they must be specified in such a manner in the declaration, that the sheriff may be able to deliver possession of the same on the judgment with certainty.

Directions for filling up a Declaration in Ejectment.

AS a declaration is usually delivered in the *vacation* to appear in the subsequent term, the title must be of the preceding term. The demise may be laid any day after the title accrues, and before the declaration is delivered, except a *Sunday*. *Note:* The notice to appear must be on the *first* day of the *subsequent term*.

The Form of a Declaration by Bill.

Michaelmas Term, 15*th Geo.* 3. *Lee.*

Middlesex, to wit, } *A. B.* complains of *C. D.* being in the custody of the marshal of the *Marshalsea* of our Sovereign *Lord* the King, before the King himself, for that WHEREAS *E. T.* on the —— day of ——, in the —— year of the reign of our Sovereign Lord *George* the Third, by the grace of God, King of *Great Britain*, and so forth, at *Westminster*, in the county of *Middlesex*, had demised, granted, and to farm let to the said *A.* —— messuages, *&c.* with the appurtenances, situate, lying, and being in the parish of *St. Clement Danes*, in the said county of *Middlesex*, TO HAVE AND TO HOLD the said tenements, with the appurtenances to the said *A. B.* and his assigns, from the —— day of ——, then last past, to the full end and term of —— years from thence next ensuing, and fully to be complete and ended: *By* virtue of which said demise, he the said *A.* entered into the said tenements with the appur-

appurtenances, and was thereof possessed until the said *C.* afterwards, *(that is to say)* on the same —— day of ——, in the —— year aforesaid, with force and arms entered into the said tenements, with the appurtenances, in and upon the possession of the said *A.* and ejected, drove out, and removed the said *A.* from his said farm, during his said term not yet expired, *(and the said* A *being so ejected, drove out, and removed)* the said *C.* hitherto hath withheld from him, and still doth withhold the possession thereof, and then and there did other injuries unto him against the peace of our said Sovereign Lord the King, and to the damage of the said *A.* 30 pounds, and therefore he brings his suit, *&c.*

The Form of a Declaration by Original.

Michaelmas Term, 15*th Geo.* 3.

Middlesex, to wit, } *A. B.* late of the parish of *St. Clement Danes*, in the county aforesaid, taylor, was attached to answer *C. D.* in an action, wherefore he the said *A. B.* entered into one messuage and one garden, with the appurtenances situate, lying, and being in the said parish of *St. Clement Danes*, in the county aforesaid, which one *E. T.* demised to the said *C.* for a term which is not yet expired, and ejected him from his said farm, and did other wrongs to him, to the great damage of the said *C.* and against the peace of our Sovereign Lord the King: And whereupon the said *C.* by *R. R.* his attorney complains, That whereas the said *E. T.* on the ——— day of ———, in the —— year of the reign of his present Majesty, at *Westminster*, in the county aforesaid, had demised to the said *C.* the said tenements, with the appurtenances to him the said *C.* and his assigns. TO HAVE AND TO HOLD the said tenements, with the appurtenances, from the —— day of ———, then last past, to the full end and term of —— years then next following, and fully to be complete and ended: *By* virtue of which said demise, the said *C.* entered into the said tenements with the appurtenances, and was possessed thereof; and being so possessed thereof, the said *A.* afterwards *(that is to say)* on the same ——— day of——, in the said——year aforesaid, with force and arms entered into the said tenements, with the appurtenances,

nances, which the said *E. T.* demised to the said *C.* in manner aforesaid, for a term which is not yet expired and ejected, the said *C.* out of his said farm, and did him other wrongs, to the great damage of the said *C.* and against the peace of our said Sovereign Lord the King, whereby the said *C.* says that he is injured, and hath damage to the value of 30 pounds, and therefore he brings his suit, *&c.*

A notice to the Tenant in Possession to be inserted at the Bottom of these Declarations.

To Mr. *I. F.* the tenant in possession.

I AM informed that you are in possession, or claim title to the premises mentioned in this declaration of *ejectment*, or to some part thereof, and I being sued in this action as the casual ejector, and having no claim or title to the same, do advise you to appear the *first* day of *Michaelmas* term next, in his Majesty's court of *King's Bench*, at *Westminster*, by some attorney of that court, and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am,

Your loving friend,

June — 1775. *Richard Letgoe.*

Note. *You may buy printed copies of these declarations on treble penny stamped paper, at any of the law stationers; they are indorsed for delivery in the same manner as another declaration.*

As you must bring separate actions for as many different premises as there are tenants, each declaration to deliver must be on treble penny, agreeable to the copy thereof you keep by you, on treble penny, in order to make an affidavit of the service of the same, to obtain a rule for judgment.

When the Tenant is to appear.

IF the premises are in *London* or *Middlesex*, and the notice in the declaration is to appear the *first* day of term, or within the *first four days* of the term, you may move any time within the *first four days*, and then the tenant has but *four days inclusive* to appear after motion; if moved

late

late in the term, the tenant has *two* or *three days* to appear, but if not moved before the *four last days* of term, he has until *two days* before the *essoign day* of the *subsequent term.* If the notice on the declaration is to appear *generally* the tenant has the whole term to appear in.

How to move for a Rule for Judgment.

WHEN you move for a rule for judgment, you annex the *affidavit* to a copy, of the service of the declaration on *treble penny stamp*, and give it a counsel with 10*s.* 6*d.* to move the same. It is a motion of course. The clerk of the rules files the affidavit and declaration on motion for a rule for judgment, so that you must take care to have another copy on stamp to keep by you; or if judgment should go against the casual ejector for want of the tenants entering into a rule, you will be forced to have an office-copy of the declaration from the clerk of the rules to enable you to sign judgment.

Rule for Judgment against the casual Ejector.

THURSDAY *next after, &c.*

A. on the demise of *F.* against *C.* } UNLESS the tenant in possession of the premises in question shall appear and plead to issue on *Tuesday next after, &c. (time tenant is to appear in)* LET judgment be entered for the plaintiff against the now defendant *C.* by default upon the motion of Mr. *D*———

BY THE COURT.

Note. *If plaintiff does not move for judgment the same term tenant had notice to appear, the court will not grant such rule. Salk.* 257.

A Rule

A Rule by Consent entered into by the Plaintiff and Defendant.

Michaelmas term in the 15th year of the reign of King *George* the Third.

IT IS ORDERED by the consent of the attornies of both parties, that *I. F.* be made defendant in the stead of the now defendant *C. D.* and do appear forthwith at the suit of the plaintiff, and file common bail, and receive a declaration in an action of *trespass and ejectment* for the premises in question in this cause, and forthwith plead thereto *Not guilty*; and upon the trial of the issue, confess, lease, entry, and ouster, and insist upon the title only, otherwise let judgment be entered for the plaintiff against the now defendant *C. D.* by default; and if upon the trial of the issue the said *I. F.* shall not confess, lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his bill against *I. F.* then no costs shall be allowed for not further prosecuting the same; but the said *I. F.* shall pay costs to the plaintiff in that case to be taxed. AND IT IS FURTHER ORDERED, That if upon the trial of the said issue a verdict shall be given for the said *I. F.* or it shall happen that the plaintiff shall not further prosecute his said bill for any other cause than for not confessing lease, entry and ouster, then the lessor of the plaintiff shall pay to the said *I. F.* his costs in that behalf to be adjudged.

BY THE COURT.

R. R. for the lessor of the plaintiff.
P. P. for the defendant.

How the Defendant must appear and plead to an action in Ejectment by Bill.

GET a blank consent-rule at a law-stationers; they are not stamped; fill it up, and make the tenant, instead of the nominal defendant, the defendant therein. Write in the *margin* of such rule the premises mentioned in the declaration. It must be signed at bottom with the tenant's attorney's name, leaving room for the plaintiff's attorney's

attorney's name over it. Ingrofs the plea of the *general iſſue, Not guilty*, with the defendant's name, on a treble penny piece of ſtamped paper, and annex the ſame to the back of the rule, and leave it at one of the judge's chambers of the court where the action is brought; pay the judge's clerk in *term*, 1 *s.* in *vacation*, 2 *s.*

By Original.

BY original, you muſt in the conſent-rule ſtrike out the words *(and file common bail)* and inſtead of *(his bill therein)* inſert *(his writ)* and inſtead of filing common bail, you muſt enter an appearance with the *filacer*.

If the defendant enters into the common rule to confeſs, *&c.* for ſo much of the tenements are in his poſſeſſion, the defendant's attorney muſt forthwith give the plaintiff's attorney notice in writing of the tenements ſo in his poſſeſſion. *Rule Trin.* 15 *Car.* 2.

A Notice of the Premiſes the Defendant defends for.

K. B. *A.* on the demiſe of *F.* againſt *C.*

SIR,

TAKE notice that I defend title for a meſſuage and garden, with the appurtenances, ſituate in the pariſh of *St. Clement Danes*, in the county of *Middleſex*, now in the poſſeſſion of the ſaid *I. F.* or his under-tenant. *Dated* the —— day of ———, 1775.

To Mr. *R. R.* the plaintiff's attorney, These,

Your's, *&c.* *P. P.* defendant's attorney.

Note. *If a perſon claims title to premiſes which he would defend, and is not in poſſeſſion of the ſame, he muſt move the court on affidavit of the fact to be made defendant, inſtead of the nominal defendant. This muſt be with the conſent of the tenant in poſſeſſion, unleſs ſuch perſon is landlord thereof.*

Steps

Steps to be taken by the Plaintiff's Attorney to draw up the Consent-Rule in Order to come to Issue.

WHEN the rule for judgment is out, you search at the *four* judge's chambers of the court, the cause is brought in, to see if defendant has pleaded. If he has pleaded, you take away your rule and plea; sign your name as plaintiff's attorney at the bottom of the rule; carry the same to the clerk of the rules, who keeps the rule, and draws you up another consent-rule; pay him for the same 6 *s.* This rule you make a copy of, and annex such copy to the issue when you deliver the same to the defendant's attorney.

Plea of Not Guilty.

AND the said *I. F.* by *P. P.* his attorney, comes and defends the force and injury, when, *&c.* and says that he is not guilty of the *trespass* and *ejectment* aforesaid, as the said *John Holdfast* above complains against him, and of this he puts himself on the country.

An Issue and Record in Ejectment by Bill or Original.

ISSUE and record in *ejectment*, when proceedings are by *bill* or *original*, are the same as in a common action *mutatis mutandis*, only using a written form instead of the common printed form for the issue in both cases.

How to sign Judgment against the casual Ejector for Want of a Plea.

SEARCH at all the judge's chambers of the court the action is brought in to see if the tenant has left a plea and rule in the cause; if there is none left, draw up a rule for judgment with the clerk of the rules; pay for the same, 5 *s.* Make *incipitur* of the declaration on a sheet of *double* 2 *s.* 6 *d. stamped paper*, and also on a *K. B.* roll; carry them with the declaration and rule to the clerk

of the judgments, who signs the judgment; pay for the same 3 *s.* 6 *d.*; this done, you may make out your *writ of possession.*

The Form of a Postea on a Verdict for the Plaintiff, against the casual Ejector, for not confessing Lease, Entry, and Ouster.

AND the said *E. F.* by *P. P.* his attorney, comes and defends the force and injury, when, *&c.* and says nothing in bar or preclusion of the aforesaid action of the said *John Holdfast*, but made default whereby the said *John Holdfast* remains therein undefended, *&c.* THEREFORE it is considered that the said *John Holdfast* do recover against the said *E. F.* his term aforesaid yet to come of and in the said tenements, with the appurtenances; AND ALSO his damages by occasion of the *trespass* and *ejectment* aforesaid: And thereupon the said *John Holdfast* freely here in court remits to the said *E. F.* as well all such damages, costs and charges as may be adjudged to the said *John Holdfast* in this behalf, as all judgments and executions for the said damages, costs and charges: THEREFORE let the said *E. F.* be acquitted of the said damages, costs and charges, and the said *John Holdfast* prays the writ of our said Lord the King to be directed to the sheriff of the county of *Middlesex*, to cause him to have possession of his said term yet to come of and in the said tenements, with the appurtenances, and it is granted to him returnable before our Lord the King at *Westminster*, on *(the return you make your writ of possession of)* the same day is given to the said *John Holdfast* there; *&c.*

Note. *The above* postea *is not stamped; it is entered with the clerk of the* posteas; *pay for entering the same* 6 d. *You give a rule for judgment thereon as in a common case; when out you tax costs with the master on the consent-rule; make copy thereof, and serve on the defendant, and demand the costs taxed; if he refuses payment on affidavit and motion, the court will grant an attachment for his contempt, which cannot be purged till he hath paid the costs. If the defendant keeps out of the way, to prevent your serving the rule and demanding the costs; on* affidavit *and motion, the court will make an order, that service and a demand on some person in the house or place where the de-*

fendant resides, shall be sufficient; and if not complied with on an affidavit of the fact and motion, the court will grant an attachment *against the defendant.*

If a verdict is given for the defendant, or the plaintiff is nonsuited for any other cause than the defendant's not confessing, &c. the defendant must get postea *stamped, and tax costs thereon as in another action. He must sue out a* ca. sa. *against the plaintiff, and on shewing the writ under seal to the plaintiff's lessor, and serving him with a copy of the consent-rule, and demanding the costs; if he does not pay the same, the court on motion will grant an attachment against him.*

The Form of a Judgment in Ejectment by non sum informatus.

AND the said *E. F.* by *P. P.* his attorney, comes and defends the force and injury, when, *&c.* and upon this the said *John Holdfast* prays that the said *E. F.* may answer his said declaration; upon which the said attorney of the said *E. F.* says, that he is not informed by the said *E. F.* of any answer to be given by the said *E. F.* to the said *John Holdfast* in the said plaint; and he says not any thing else thereupon in *bar* or *preclusion* of the said action of the said *John Holdfast*, by which the said *John Holdfast* remains undefended upon that occasion against the said *E. F.* for which it is considered that the said *John Holdfast* recover against the said *E. F.* the possession of his said term yet to come of and in the said tenements, with the appurtenances, and his damages by occasion of the said *trespass* and *ejectment*; but because it is unknown what damages the said *John Holdfast* has sustained by occasion of the said *trespass* and *ejectment*, *it is commanded* to the sheriff, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *John Holdfast* has sustained, as well by occasion of the said *trespass* and *ejectment*, as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which, *&c.* the sheriff do make appear to our Lord the, *&c.* on *(the return of inquiry)* under his seal, *&c.* and the seals, *&c.* The same day is given to the said *John Holdfast*, *&c.* and upon this the said *John Holdfast* prays the writ of our Lord the King to be directed to the sheriff of

of the county aforesaid, to cause him to have possession of the said term yet to come of and in the said tenements, with the appurtenances; and it is granted to him returnable before our Lord the King at *Westminster*, on *(the return of the writ of possession.)*

The Form of a Declaration by Original in Ejectment for the mesne Profits.

MIDDLESEX, to wit, *C. D.* late of *London*, taylor, was attached to answer to *A. B.* of a plea, wherefore with force and arms he broke and entered into five messuages, with the appurtenances, at *Westminster*, in the county aforesaid, and drove out and removed the said *A. B.* from the possession and occupation of the same tenements, and for a long time withheld the said *A. B.* from the possession and occupation of the same *(he being so driven out and removed therefrom as above-said;)* and the said *C. D.* during all the time aforesaid, had and received to his own proper use, all the issues and profits of the said tenements of the yearly value of 100*l.* and did other injuries to the said *A. B.* to the great damage of the said *A. B.* and against the peace of our Sovereign Lord the King, *&c.* And whereupon the *said A. B.* by *R. R.* his attorney, complains that the said *C. D.* on the —— day of ——, in the —— year of the reign of his said present Majesty, with force and arms broke and entered into the said five messuages, with the appurtenances, at *Westminster*, in the county aforesaid, and drove out and removed the said *A. B.* from the possession and occupation of his said tenements, and for a long time *(that is to say, from the —— day of ——, in the —— year aforesaid, until the day of suing out the original writ of the said* A. B. *withheld the possession and occupation of the said tenements from the said* A. B. *he being so driven out and removed as above-said)* and also the said *C. D.* had and received to his own use, all the issues and profits of the said tenements, of the yearly value of 100*l.* during all the time aforesaid, and did other injuries to the said *A. B.* to his great damage, and against the peace of our said Sovereign Lord the King, *&c.* wherefore he says, he is injured, and hath damage to the value of 200*l.* and therefore he brings his suit, *&c.*

A Plea in Abatement, that there is no such Writ.

AND the said *C. D.* by *P. P.* his attorney, comes and defends the force and injury, when, *&c.* and craves oyer of the said writ, and it is read to him in these words, *to wit*, GEORGE the *Third*, *&c.* TO the sheriff of *Middlesex*, *greeting*: If *A. C.* shall give you security that his suit shall be prosecuted, then put *C. D.* late of *London*, taylor, by sureties and safe pledges, that he be before us on (*the return*) wheresoever, *&c.* to shew wherefore with, *&c.* (*as in the declaration to the end*) and have you there the names of the pledges, and this writ. WITNESS ourself, at *Westminster*, the —— day of ———, in the —— year of our reign: Which being read and heard, the said *C. D.* prays judgment of the said writ; because he says that there is not any such form of a writ in an action of *trespass* and *ejectment* in the register of writs as the form aforesaid; and that the said writ varies from the said register of writs in this respect, inasmuch as it does not appear by the said writ, that the messuages therein mentioned were the messuages of the said *A. B.*; and this he is ready to verify; wherefore he prays judgment of the said writ, and that the same may be quashed, *&c.*

The Form of a Writ of Possession by Bill.

GEORGE the *Third*, *&c.* TO the sheriff of *Middlesex*, *greeting*: WHEREAS *A. B.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *C. D.* his term yet to come, of and in one messuage, with the appurtenances, situate, lying, and being at *Westminster*, in the county aforesaid, which *I. P.* on the —— day of ———, in the ——— year of our reign, demised to the said *A. B.* for a term of years not yet expired, *to wit*, on the —— day of ——— then last past, to the full end and term of five years from thence next ensuing, and fully to be complete and ended, by virtue of which demise the same *A. B.* entered upon the same tenements, with the appurtenances, and was thereof possessed until the said *C. D.* afterwards, to wit, on the same —— day of ——, in the —— year aforesaid, with force and arms, entered

entered into the said tenements, with the appurtenances, and him the said *A. B.* from his farm aforesaid, the said term then and there not being expired, ejected, drove out, and removed, and him the said *A. B.* hath withheld from his possession thereof, and still doth withhold, whereof the said *C. D.* is convicted, as appears to us upon record. THEREFORE we command you, that without delay, you cause the said *A. B.* to have his possession of his term aforesaid yet to come, of and in the tenements aforesaid, with the appurtenances, and in what manner you shall have executed this our writ, make appear to us at *Westminster*, on *(the return of the writ of possession)*: And have there then this writ. WITNESS William lord Mansfield, at *Westminster*, *&c.*

Note. *This writ must be ingrossed on a 2 s. piece of stamped parchment. Make a precipe for the office thus:*

A Precipe for the Office.

MIDDLESEX, *to wit*, Writ of possession for *A. B.* on the demise of *F.* against *C. D.* for a messuage, with the appurtenances, situate at *Westminster*, in the county of *Middlesex*.

Returnable *(the return)*.

R. R. attorney.

Note. *Carry the writ and precipe to the officer who signs the writs in this court; pay him for signing the same 1 s. and 8 d. sealing at the seal office 7 d. the sheriff's warrant thereon 2 s. and 4 d. his fees for executing the same is 1 s. in the pound, on the yearly value of the premises, if the same does not exceed 100 l. per annum, and 6 d. in the pound for every 20 s. above, and 2 s. returning the writ. Officer's fee executing writ usually 1 l. 1 s.*

If the proceedings are by original, the writ of possession differs only from the above in the introductory part, and the return. It is signed by the filacer, and sealed as the above writ.

Adjudications in Ejectment.

AN *ejectment* may be brought against a tenant who gives notice to quit at such a time, and does not quit accordingly, as well as when the landlord gives the tenant notice to quit. *M. S. Cases of Practice.*

A landlord must not receive any rent after an *ejectment* is brought, nor till the same is determined; if he does, it is a waiver of the *trespass* on which such action is grounded, and he will be nonsuited on the trial for so doing. His remedy for the rent in arrear is by action for the *mesne profits.* 2 *Bur.* 668.

On the landlord being made the defendant under *stat.* 11 *Geo.* 2. on non-appearance of the tenant, the court will stay execution against the casual ejector. 2 *Bur.* 756.

If the defendant absconds to avoid being served with the declaration in *ejectment*, the court will on motion order that the service on some person in the house shall be sufficient. 2 *Bur.* 1116.

If the defendant is personated in order to evade service; on an *affidavit* of the fact, the court will make an order that the same shall be deemed good service. 2 *Bur.* 1182.

If a judgment is obtained against a casual ejector, and no trial is lost, the court will set such judgment aside in favour of the landlord or tenant, on paying costs and entering into the common rule.

No person can be admitted to defend in *ejectment* with the tenant in possession, but one that has been in possession, or who receives the rents.

The landlord cannot be compelled by the tenant to join as a defendant in *ejectment.* If he should be a member of parliament, though he be joined, he cannot be compelled to waive his privilege. *Salk.* 256.

By

By *stat.* 11 *Geo.* 2. the court are empowered to suffer a landlord to make himself a defendant, by joining with tenant in the action, in case he shall appear.

If the tenant refuses to appear, judgement shall be signed against the casual ejector; but if landlord enters into the rule, the court will order a stay of execution against the casual ejector until they make farther order therein.

By the same *statute*, a tenant receiving declaration in *ejectment*, and not acquainting his landlord thereof, so that he may defend the title, shall forfeit three years improved or rack-rent of the premises he holds of such landlord.

Where the plaintiff recovers in *ejectment* by verdict, he may bring an action for the *mesne profits* from the time of the defendant's entry laid in the declaration.

It is not necessary at the trial to prove an entry of the plaintiff, because the defendant confesses the same by rule, and his entry on the plaintiff is found by the verdict against him. It may be brought either by the plaintiff in the action, or by the lessor or lessee; where it is brought by the plaintiff, he need only on the trial produce the *postea* of the recovery; but where the lessor or lessee brings the action, they must prove the title over again, if insisted on by the other side, or else they will be nonsuited. 2 *Bur. Rep.* 668. 3 *Wilson* 118.

By whom an action for the mesne profits may be brought.

The plaintiff in *ejectment* being a mere nominal person, and a trustee for the lessor, if he releases the action, or if pending the action for the *mesne profits* he releases the same, he may, on motion, be committed for a contempt. 2 *Strange* 809.

In an *ejectment* brought on the demise of an infant, the court, at the defendant's request, will stay the proceedings till a sufficient plaintiff be named, or some person will undertake on behalf of the infant to pay such costs as shall be adjudged to the defendant. 2 *Strange* 932. 2 *Barn. K. B.* 140.

If a house is empty, or lands untenanted, and the proceedings are by sealing a lease on the premises, when

you move for judgment, there must be an *affidavit* of sealing such lease, and the purport of the lease should be shortly set forth, and in what manner the defendant got possession from the lessee *(who is always made plaintiff in this case)* and how the declaration was delivered to the defendant, that the court may judge of the consistency of the proceedings. *MS. Cases of Practice.*

By *stat.* 4. *Geo.* 2. where half a year's rent is in arrear, and the landlord has a right to re-enter for non-payment, he may serve a declaration without a formal re-entry, or affix the same on the door of the house, or on the most notorious part of the land, which shall be deemed a legal service; and on proof that such rent was due before the declaration was served, and no sufficient distress to cover the same, the lessor shall recover. *MS. Cases of Practice.*

On moving for judgment in this case, there must be an *affidavit* stating the several matters aforesaid, or that the defendant could not be legally served with the declaration *(as the case may be)*; and that a copy thereof was affixed as aforesaid, and where, or the court will not grant a rule. *Ibid.*

If such tenant before the trial tenders to the plaintiff, or brings into court the rent in arrear, with costs, all further proceedings shall cease. *Ibid.*

By *stat.* 11 *Geo.* 2. Tenants holding at a rack-rent, or where rent reserved shall be three-fourths of the yearly value, who shall be in arrear for one year's rent, and shall desert the premises, so that no sufficient distress can be had, two justices of the peace (having no interest therein) at the request of landlord, may view the same, and affix, on the most notorious part thereof, notice in writing, what day *(at the distance of fourteen days at least from such first view)* they will return to take a second view thereof; and if on such second view, the tenant or some person on his behalf, shall not pay the rent in arrear, and there shall be no sufficient distress, the justices may put the landlord into possession, and the lease thereof to such tenant as to any demise shall be void.

A suit

A suit in *ejectment* does not abate by the death of a nominal plaintiff, for while there is a man of the name *in rerum natura*, the court will intend he was plaintiff. 1 *Mod.* 252.

Where a term in *ejectment* is nearly expired, it may be amended without consent, but that was upon motion in court. 2 *Strange* 1272.

If judgment is given against the casual ejector for want of the real defendant's confessing, *&c.* he cannot bring a *writ of error* to reverse a judgment to which he was not a party; and if he brings such writ in the name of the casual ejector, the casual ejector being a friend to the plaintiff's lessor, he may either release the errors, or move the court for a *non pros*, which they will order to be entered. *Lord C. J. B. Gilbert's Law of Ejectments, page* 23.

The plaintiff cannot have judgment against the casual ejector till common bail is filed. *ibid.*

If a *writ of error* is brought by the defendant before errors assigned, the plaintiff must file his bill of *ejectment* or *latitat* (*as the case may require.*) *ibid.*

A new trial may be granted in *ejectment*, as well as in any other action, if the circumstances of the case justify such request. 3 *Bur.* 1255.

Matters of *ejectment* are immediately under the controul of the court, and they, on application, will model them to answer every purpose of justice and convenience. 3 *Bur. Rep.* 1304.

On application, the court will admit the landlord as a co-defendant with his tenant, or to defend the title alone. *ibid.*

Where the tenant in possession claims nothing, he ought to join on neither side, but let the parties have a fair trial between them on the real merits. 3 *Bur. Rep.* 1293, 1300, 1304.

The

The confession of lease, entry and ouster is sufficient to bar a *nonsuit* for want of proof of actual ouster. 3 *Bur. Rep.* 1897.

Trustees shall not recover possession from, or dispute title with their *cestui que trust*. 3 *Bur Rep.* 1901.

Note. *The above sketch of the proceedings in ejectment are in the* K. B.

An Affidavit of Rent in Arrear from the Tenant, where there is no Distress in order to recover in Ejectment.

B. K.

A. B.
against
C. D.

A. B. of, *&c.* the plaintiff in this cause maketh oath, That the above defendant justly owes to him this deponent the sum of —— pounds for a year's rent *(or as the case is)* of one messuage, *&c.* now in the possession of the said defendant as tenant thereof *(or as the case is)* due to this deponent at ——— *(the time when due)* and that no sufficient distress can be had or found on the premises to satisfy the said rent: *And further* that he this deponent has a right and power by law to re-enter on the said messuage, *&c.* on non-payment of the rent aforesaid.

A. B.

SWORN, *&c.*

An Affidavit of a Tenant's refusing to defend an Ejectment in order to have the Landlord admitted Defendant.

G. Lessee of J. B. *against* N. N.

J. D. &c. maketh oath, That he this deponent did on this ——day of ———, by the direction of *N. B.* landlord of the premises in question in this cause apply to *G. B.* tenant in possession of the said premises to know whether he the said *G. B.* would appear and become defendant

fendant in this cause, or would permit the said *N. B.* to defend his title to the premises in the name of the said *G. B.* And this deponent at the same time shewed and offered to deliver unto the said *G. B.* a note undersigned by the said *N. B.* whereby the said *N. B.* promised to defend and keep the said *G. B.* harmless, from all costs and charges in this cause, but the said *G. B.* then told this deponent that he would not appear and become defendant in this cause, or any-wise concern himself therein.

SWORN, &c. *J. D.*

An ABSTRACT *of an* ACT *of the* 14*th of* GEORGE III.

For the further and better Regulation of Buildings, and Party-walls; and for the more effectually preventing Mischiefs by Fire within the Cities of London *and* Westminster, *and the Liberties thereof, and other the Parishes, Precincts, and Places within the Weekly Bills of Mortality, the Parishes of* Saint Mary-le-bon, Paddington, Saint Pancras, *and* Saint Luke *at* Chelsea, *in the County of* Middlesex; *and for indemnifying, under certain Conditions, Builders and other Persons against the Penalties to which they are or may be liable for erecting Buildings within the Limits aforesaid contrary to Law.*

AS an act made 12 *Geo.* III. c. 73. intitled, *An act for the better regulation of buildings and party-walls within the cities of* London *and* Westminster, *and the liberties thereof, and other the parishes, precincts, and places in the weekly bills of mortality, the parishes of* Saint Mary-le-bon *and* Paddington, Saint Pancras *and* Saint Luke *at* Chelsea, *in the county of* Middlesex, *and for the better preventing of mischiefs by fire within the cities, liberties, parishes, precincts, and places; and for amending and reducing the laws relating thereto into one act, and for other purposes*, hath been found insufficient: And as it may tend to the safety of the inhabitants, and prevent great inconveniencies to builders, and workmen employed in buildings, within the said cities, liberties, and places, if the regulations contained in the said act were repealed, and

and other regulations respecting such buildings were established, it is enacted, That the several churches, chapels, meeting-houses, and all other buildings, at any time heretofore begun or built, or which shall, at any time hereafter, be begun or built within the said cities, liberties, and places, on new or old foundations, shall be distinguished by, and divided into, the seven several classes of building after described; and such seven several classes shall be under the directions after contained.

Every church, chapel, meeting-house, and place of worship; and every house or building for distilling of liquors for sale, making of soap, melting of tallow, dying, boiling, or distilling turpentine, casting brass or iron, refining of sugar, making of glass for chymical works, of what dimension soever; and every warehouse and building, not being a dwelling-house, built, or to be built, (except such buildings as are after declared to be of the fifth, sixth, or seventh class of building), which shall exceed three clear stories above ground, exclusive of the rooms (if any) in the roof, or which is of the height of thirty-one feet from the surface of the pavement or way, above the area before either of the fronts thereof, to the top of the blocking-course or the coping on the parapet; and every dwelling-house, built or to be built, which, with the offices thereto belonging, otherwise than by a fence-wall, or covered passage, open on one or both sides when finished, shall exceed the value of 850 *l.*; and also every dwelling-house, which shall exceed nine squares of building on the ground-floor, each square containing one hundred superficial feet, shall be deemed the first class of building.

Every front or other external wall, (not being a party-wall), after the twenty-fourth of *June* 1774, built to a first rate building, or to an addition thereto, shall be built at the foundation of the thickness of one foot nine inches and an half at the least; and shall gradually diminish on each side of the wall two inches and a quarter to the top of the footing of every wall, except where any adjoining building will not admit of such footing being made on the side of such wall next such adjoining building; in which case such footing shall be made as near to the dimensions directed as the case will admit; which footing shall be nine inches high at the least, and wholly

wholly below the flooring-boards of the cellar story two inches at the least; and every such wall shall, from the top of such footing, be of the thickness of one foot five inches and an half at the least, up to the under side of the one pair of stairs floor; and from thence of the thickness of thirteen inches at the least up to the under side of the plate under the roof; and from thence of the thickness of eight inches and an half at the least, up to the under side of the blocking-course of every first rate building; except such parts of every wall as shall be wholly of stone, which parts shall be of the thickness of fourteen inches below the ground-floor, and of nine inches above the ground-floor; and except all recesses above the ground-floor in the said walls, which shall be arched over in every story, so as that the arch, and the back of such recess, shall be of the thickness of eight inches and an half at the least.

Every party-wall after the twenty-fourth of *June*, built to a first rate building, or an addition thereto, shall be built at the foundation of the thickness of two feet six inches and an half at the least; and shall, from thence, gradually diminish on each side four inches and an half to the top of the footing of every wall, which footing shall be one foot high, and wholly below the flooring-boards of the cellar story two inches at least; and every party-wall shall, from the top of such footing, be of the thickness of one foot nine inches and an half to the under side of the ground-floor; and from thence of the thickness of one foot five inches and an half to the under side of the floor of the rooms in the roof of the highest building adjoining to such party-wall; and from thence of the thickness of thirteen inches to the top of every such party-wall.

Every building, not being a dwelling-house, except such as are of the first, fifth, sixth, or seventh class, which shall exceed two clear stories, or contain more than three clear stories above ground, exclusive of the rooms in the roof, or which shall be of the height of twenty-two feet, and shall not be thirty-one feet high, from the surface of the ground, before the fronts thereof, to the top of the parapet thereof; and every dwelling-house to be built, which, with the offices thereto belonging, otherwise than by a covered passage open on

one

one or both sides shall exceed the value of 300*l.* and shall not amount to more than 850*l.*; and every dwelling-house, which shall exceed five squares of building on the ground plan, and shall not amount to more than nine squares of building on the ground plan thereof, shall be deemed the second rate of building.

Every front or external wall (not a party-wall) which shall after the 24th of *June*, be built to a second rate building, or to any addition thereto, shall be at the foundation of the thickness of one foot five inches and an half, and shall from thence gradually diminish on each side of the wall two inches and a quarter to the top of the footing of every wall, except where an adjoining building will not admit of such footing being made; in which case such footing shall be made as near to the dimentions directed as the case will admit; which footing shall be nine inches high, and wholly below the flooring-boards of the cellar story two inches; and every wall shall, from the top of such footing, be of the thickness of thirteen inches, to the one pair of stairs floor, and from thence eight inches and an half to the coping on the parapet of every second rate building, except such parts of every wall being above the ground-floor, wholly of stone, which parts shall be of the thickness of nine inches, and except recesses above the ground-floor in the walls, which shall be arched over, so as that the arch and the back of each recess shall be of the thickness of eight inches and an half.

Every party-wall after the twenty-fourth of *June*, built to a second rate building, or addition thereto, shall be at the foundation of the thickness of two feet six inches and an half, and from thence gradually diminish on each side of the wall four inches and an half to the top of the footing of every wall; which footing shall be nine inches high, and wholly below the flooring-boards of the cellar-story two inches; and every party-wall shall, from the top of such footing be of the thickness of one foot nine inches and an half up to the ground-floor, and from thence one foot five inches and an half up to the floor of the two pair of stairs story, and from thence thirteen inches to the top of every party-wall.

Every other building, not being a dwelling-house, except declared to be of the first, fifth, sixth or seventh class of building, which shall exceed one story, and not contain more than two stories above ground, exclusive of the rooms in the roof, or is of the height of more than thirteen feet, and not twenty-two feet from the pavement, before the fronts thereof, to the top of the coping on the parapet thereof; and every dwelling-house, with the offices thereto belonging, otherwise than by a fence-wall, or covered passage open on one side, when finished, shall exceed 150*l.* and shall not amount to more than 300*l.*; and every dwelling-house, which shall exceed three squares and an half of building on the ground plan, and shall not amount to more than five squares on the ground-plan thereof, shall be deemed the third rate of building.

Every front or external wall (not a party-wall) which shall, after the twenty-fourth of *June*, be built to a third rate building or to an enlargement thereof, shall be at the foundation, of the thickness of one foot five inches and an half, and from thence gradually diminish, on each side, two inches and a quarter to the top of every wall, except where an adjoining building will not admit of such footing on the wall next such building; then the footing shall be made as near to the dimensions directed as possible, which shall be six inches high, and wholly below the pavement and flooring-boards of the cellar-story two inches; and every wall shall, from the top of such footing be of the thickness of thirteen inches, up the under side of the ground-floor; and from thence eight inches and an half, up to the under side of the coping on the parapet.

Every party-wall after the twenty-fourth of *June*, built to a third rate building, or to an enlargement thereof, shall be, at the foundation, of the thickness of two feet two inches, and thence gradually diminish on each side four inches and an half, to the top of every wall, which footing shall be nine inches high below the pavement and flooring-boards of the cellar story two inches, and from the top of such footing be of the thickness of one foot five inches and an half, up to the under side of the ground-floor, and from thence thirteen inches up to the top of every party-wall.

Every

Every warehouse and building not being a dwelling-house, except such as are of the first, fifth, sixth, or seventh class, which shall not exceed one story above ground, exclusive of the rooms in the roof thereof, or which is not of the height of more than thirteen feet from the surface of the pavement before either of the fronts to the coping on the parapet; and every dwelling-house now built or to be built, which, with the offices thereto belonging, connected otherwise than by a fence-wall, open on one or both sides, does not exceed 150 *l.* in value; and every dwelling-house which does not exceed three squares and an half of building on the ground plan, shall be deemed to be of the fourth rate or class.

Every front or external wall, which shall, after the twenty-fourth of *June*, be built to a fourth rate building, or to an enlargement thereof, shall be, at the foundation, of the thickness of one foot five inches and an half, and from thence gradually diminish on each side two inches and a quarter to the top of the footing, except where an adjoining building will not admit of such footing; then the footing shall be made as near to the dimensions directed as possible, which footing shall be six inches high, and wholly below the flooring-boards of the cellar story two inches; and from the top of such footing be of the thickness of thirteen inches, up to the under side of the ground-floor; and from thence eight inches and an half, up to the under side of the coping on the parapet.

Every party-wall which shall, after the twenty-fourth of *June*, be built to a fourth rate building, or to an enlargement thereof, shall be of the thickness of one foot five inches and an half, and shall gradually diminish on each side two inches and a quarter to the top of the footing of every wall; which footing shall be nine inches high, and wholly below the flooring-boards of the cellar story two inches; and from the top of such footing, shall be of the thickness of thirteen inches, up to the under side of the ground-floor; and from thence eight inches and an half, up to the top of such wall.

After the twenty-fourth of *June*, every house built of the first, second, third, or fourth rate of building, and

and not having a distinct side-wall on the parts where they shall be contiguous, shall have party-walls between house and house, or between so much of them as shall not have such separate walls as aforesaid; And such party-walls shall extend to the outer surfaces of the external inclosures of each of the adjoining houses; And all party-walls, chimnies, and chimney-shafts, shall be built wholly of good sound bricks or stone, except such timber, wood, lead, or iron work laid therein, according to the directions contrived, and except piling, &c. necessary for the foundation thereof; and shall be topped with stone or brick, of the dimensions directed; and one half of every party-wall between other buildings shall be built on the ground of one of the adjoining houses, and the other half on the ground of the other adjoining houses; and the first builder of such party-wall, and workmen employed in building the same, may enter upon the ground in order to build such party-wall in manner aforesaid.

Every party-wall which shall, after the twenty-fourth of *June*, be built to a dwelling-house, exceeding four stories in height, exclusive of the rooms in the roof, shall be built according to the directions contained with respect to party-walls of the first rate, though not of the first rate; and every party-wall, after the time aforesaid, built to a dwelling-house containing four stories in height, exclusive of the rooms in the roof, shall be built according to the directions, with respect to party-walls of the third rate, notwithstanding such house be of the fourth rate.

Every internal inclosure to be made, after the twenty-fourth of *June*, for separating any building of the first, second, third, or fourth class, from other buildings, in separate occupations, and every addition to such internal inclosure, shall be of brick, artificial stone or stucco together; except wood, lead, or iron-work, laid therein, according to the directions for external inclosures to such first, second, third or fourth class of building, and also except piling or planking, necessary for the foundation of the same.

In valuing building of the first, second or third class, and ascertaining the rate thereof, such valuation is to be

made by the ſurveyor appointed purſuant to the act, for the diſtrict in which the building is ſituated; and every building ſhall, notwithſtanding any decay, be eſtimated as if the materials whereof the ſame conſiſts were ſound, and the work new; and at the prices the like materials and workmanſhip ſhall be worth at the time ſuch valuation is made; but neither the ſoil whereon any building ſtands, nor any fence (except railing to areas; and ſteps before or behind the building, made for incloſing ſuch building, with the appurtenances thereto belonging from a neighbouring ground) nor any arched vault, under the ground, before or behind ſuch building, nor lead or covering over ſuch vaults, nor ſuch parts or party-walls to ſuch building as ſtand upon the ground not belonging to ſuch houſe, ſhall be included in any valuation; and in aſcertaining the ſquares of building in every dwelling-houſe, the ſame ſhall be taken on the level of the floor, at the principal entrance to ſuch dwelling-houſe, and only ſuch parts of the party-walls as belong to ſuch houſe ſhall be included in ſuch admeaſurement: And if the owner, or perſons intereſted in ſuch dwelling, ſhall be injured by the admeaſurement made by ſuch ſurveyor, owner, or other perſon, they may apply to the mayor or juſtices for the city of *London*, if ſuch building is ſituated within the city, or otherwiſe to any juſtices within whoſe juriſdiction the ſame is ſituated; and the mayor or juſtices ſhall enquire into the matter, and by their order, declare ſuch building to be of ſuch claſs as the ſame ſhall appear to be of, according to the deſcription of the rates before contained; and the parties between whom ſuch order ſhall be made may appeal to the juſtices at their general quarter ſeſſions, whoſe determination ſhall be concluſive to all parties.

Every dwelling-houſe and other building (except buildings not being dwelling-houſes, as are of the firſt or ſeventh claſs of building) which is at the diſtance of four feet, and not eight feet, from a publick road or cauſe-way, and detached from any other building not in the ſame poſſeſſion therewith ſixteen feet, and not thirty feet, or connected with any other building by a fence, ſhall be deemed of the fifth claſs, and ſhall be built of any dimenſions whatever.

Every

Every dwelling-house and other building (except buildings, not being dwelling-houses, as are of the first class) which is at the distance of eight feet from a publick road or causeway, and is detached from any building not in the same possession therewith thirty feet, or connected only by a fence wall, shall be deemed of the sixth class, may be built of any dimensions and materials whatever.

Every cranehouse, built on any wharf, and every shamble, windmill, *&c.* and building situate without *London* and *Westminster*, and the liberties thereof, used for workshops or drying-places for tanners, fell-mongers, glue-makers, size-makers, callico-printers, whitsters, whiting-makers, curriers, leather-dressers, buckram-stiffners, oil-cloth painters, wool-staplers, throwsters, parchment-makers, and paper-makers, so long as they are used for those purposes, shall be deemed the seventh class of building, and may be built of any dimensions whatever.

Every crane-house, built after the twenty-fourth of *June*, and every addition to a crane-house already built, or to be built, and every new side, end, or external inclosure which shall, after the twenty-fourth of *June*, be made, shall be of stone, brick, slate, tile, oak, elm, steel, iron, or brass; but every other building of the seventh class may be erected of any materials whatever; and no crane-house or other building of the seventh class, or any external part thereof, shall, after the twenty-fourth of *June*, be covered with pitch or other inflammable composition, nor shall, after the said date, be converted to any other use.

Every office which shall be detached from such building to which the same belongs, or connected therewith by a covered passage open on one or both sides, shall be deemed on the class of building such office would be of, if it did not appertain to any dwelling-house.

As some houses, erected before the 24th *June*, may have party-walls, although not built agreeable to the rules directed to be observed concerning party-walls to be built, after the said date, and it may happen that the adjoining houses may hereafter be rebuilt without making

ing use of such party-walls, every such wall may remain as a party-wall unto both houses to which the same belongs shall be rebuilt (if such wall continue sound) and no longer; And if either house to which such party-wall does belong shall be rebuilt with a wall against such party-wall (without using such party-wall) of the height and thicknesses prescribed, the proprietor of such remaining house shall not, when such old party-wall shall be taken down, be intitled to more than one half of the materials, nor to more than an half of the ground on which it was erected; nor shall such proprietor build on more than half of the ground, unless he agree with the owner of such adjoining house for the other half thereof; and if the parties cannot agree, and be desirous of buying and selling, the price, &c. shall be settled by a jury, to be summoned, returned, and impanelled, as mentioned concerning mixed property: But if such remaining house be of the first, second or third class, or be four stories high, exclusive of the rooms in the roof, and such old party-wall be not of the thickness of one foot five inches and an half from the foundation to the under side of the ground-floor, and from thence to the top of the thickness of thirteen inches; then such wall shall, when either of the houses to which it belongs shall be rebuilt, be considered as if it had been adjudged ruinous, pursuant to the directions for condemning an unsound party-wall; or if such party-wall shall have any timber of an adjoining building lying through the same, and if, when either of the houses shall be rebuilt, the owner of such adjoining house will not permit so much of such timber to be cut off as shall leave six inches of clear brick-work beyond the end of every such timber, then such wall shall be considered as condemned, pursuant to the act, and shall be taken down and rebuilt, in such manner as directed concerning party-walls adjudged ruinous.

As some houses erected before the 24th of *June*, 1774, may have a good timber partition between the same and the adjoining building, such partition may remain until the adjoining houses shall be rebuilt, or have one of the fronts which abutt on such partition taken down to the one pair of stairs floor, and rebuilt, or until such partition shall be condemned, pursuant to directions concerning ruinous party-walls, and no longer.

No

No wall of a building of the first, second, third or fourth class, erected or to be erected, or of any addition made thereto, which shall not be a party-wall on the 24th of *June*, shall ever be a party-wall, unless it be of the heights and thicknesses above the footings, and of the materials, directed concerning party-walls.

Every wall built after 24th *June*, and every addition made to any party-wall, shall be carried up one foot six inches above the roof of the highest building which shall gable against such party-wall, in every part where such building shall gable thereto, measuring at a right angle with the back of the rafters of such roof; and every party-wall shall be carried up one foot above the gutters of the highest buildings, except the height shall exceed that of the parapet of either of the fronts abutting on the same or adjoining thereto; in which case, the end only of every party-wall next such parapet may be less than one foot above the gutter, at the distance of two feet six inches from the front of such parapet; and if any dormer shall be fixed in the roof of any building, within four feet of any party-wall, then such party-wall shall be carried up against every dormer, and shall extend in breadth two feet wider, and to the height of every part of such dormer, within four feet of such party-wall: And no recess shall be made in a party-wall after built to any building of the first, second, third, or fourth class (except chimnies, flues, girders, and beams, *&c.*) as directed, so as to reduce such wall under the thickness required, to the highest class to which such party-wall belongs: And there shall be no opening, after the 24th *June*, made in any party-wall, except for the communication from one stack of warehouses to another, and from one stable building to another; all which communications shall have iron doors, in manner after directed; and also except passages on the ground for foot passengers or carriages as may be necessary; all which passages shall be arched with brick, or brick and stone together, of the thickness of thirteen inches in the first and second class, and of the thickness of eight inches and an half in every building of the third or fourth class: And if there be any cellar under any passage, it shall be arched over with brick or stone, as the passage over such cellar is directed to be arched.

No timbers shall, after the 24th *June*, be laid into any party-arch, except for bond to the same, nor into a party-wall, other than templets and bond-timbers necessary for the same; and others than ends of girders or trimming joists, or of other principal timbers; all which timbers shall have eight inches and an half of solid brick-work between the ends and sides of every such piece of timber, and the timber of any building adjoining thereto; and the end of every girder, *&c.* or trimming-joist and other piece of timber, may be laid beyond the centre of any party-wall hereafter to be built, so as there be left eight inches and an half of solid brick at the end of every piece of timber, except in places where part of the ends of such timber lies opposite to the ends of any timber of an adjoining building, in which case, no part of such timber shall approach nearer than four inches to the centre of the said wall.

No person shall cut any party-arch, nor the shaft of a chimney on a party-wall, for any purpose whatsoever; and no person shall cut a party-wall, other than for the purposes mentioned; *viz.* When the front or back wall of a house is in a line with the front or back wall of the house adjoining thereto shall at any time be built, a break not more than nine inches deep from the external face of such front or back wall to the centre of such wall may be made for inserting therein the end of such new front; and where a bressumer and story-posts shall be fixed in the ground-story of such new front or back-wall, such break may be cut from the foundation of such new front to the top of such bressummer, fourteen inches deep from the face of such front, and may be four inches wide in the cellar-story, and two inches wide in the ground-story, for the placing therein story-posts, agreeable to the directions of the act; and may cut into a party-wall for tailing in stone-steps or landings, or placing in timbers for bearers to wood-stairs, so as no bearer be laid into a party-wall nearer than eight inches and an half to any chimney, or to any timber of an adjoining house, or nearer than four inches to the internal finishing of such adjoining house, and for laying therein stone-corbels for the support of chimney-jambs, girders, beams, purlings, binding of trimming-joists; and may cut perpendicular recesses into any party-wall, not less than thirteen

thirteen inches thick, for inserting walls and piers therein, so as that no such recess be more than fifteen inches wide, or four inches deep, and no nearer than than feet to any other recess; and may cut off the footing on the side of the party-wall where the adjoining buildings shall be rebuilt with a wall against such party-wall; but every person who shall cut into any party-wall for the purposes aforesaid shall immediately make good, and effectually pin up with brick, *&c.* bedded in mortar, every defect occasioned by cutting of such party-wall; and no party-wall shall be cut, if the cutting thereof endanger the timbers, chimnies or internal finishings of the adjoining buildings.

The back of every chimney in every party-wall which shall, after the 24th *June*, be built, shall be thirteen inches thick in the cellar-story, and eight inches and an half thick in every other story from the hearth to the height of twelve inches above the mantle in every chimney; and no chimney, after the 24th *June*, of the first class, shall be built with the back thereof against the back of any other chimney, unless the back of each chimney in the cellar story be eight and an half, and the back of each chimney in the upper stories be four inches and a quarter from the centre of such party-wall: And no chimney, after the 24th *June*, in any party-wall, where the building adjoining is of the second, third, or fourth class, shall be built with the back thereof against the back of any other chimney, unless the back of each chimney in the cellar story be six inches and an half, and the back of each chimney in the upper stories be four inches and a quarter from the centre of such wall: And no flue shall be built opposite to another in a party-wall, unless the back of each flue be two inches from the centre of such party-wall: The breast of each flue, after the 24th *June*, built, whether in a party-wall or not, shall be of brick eight inches and an half thick in every cellar story, and four inches thick in every other story: All partitions between flues, after the 24th *June*, shall be of brick, *&c.* and every partition shall be half a brick thick: And every breast and back of chimnies, and breast, back, and partition of a flue hereafter built, shall be pargetted within and without, except the outside be next to vacant ground, the back of every chimney and flue near such vacant ground shall be

in ſome durable manner marked, except in a fore-front, back-front, or ſide-front of any other building not to be built againſt; and every back of ſuch chimney and flue againſt ſuch vacant ground ſhall be pargetted as ſoon as any building ſhall be erected to ſuch wall.

If any perſons, poſſeſſed of any ground whereon a party-wall is to be built, be deſirous of having chimney-jambs, breaſts, and flues, made in ſuch party-wall on their part thereof, or of having a receſs left of the breadths and depths in and by the act allowed, for inſerting therein external or internal walls, or for other purpoſes allowed by the act, and of ſuch deſire ſhall give notice in writing under their hands, deſcribing every chimney-jamb, *&c.* and every receſs to the builder, at any time before ſuch party-wall ſhall be begun to be built; then ſuch builder ſhall erect, in a ſubſtantial manner, ſo many chimney-jambs, *&c.* in ſuch parts of every party-wall as ſhall be, by the perſons giving notice, required; and leave receſſes in every party-wall, according to the regulations by the act preſcribed: And after erecting the jambs, *&c.* required, the perſons giving notice, or their executors, *&c.* ſhall be deemed to have made uſe of ſuch party-wall, and ſhall be liable to pay the whole expence of erecting ſuch jambs, *&c.* and alſo ſuch part of the expence of erecting ſuch wall, as directed concerning party-walls built after the 24th *June*, to be recovered in like manner as any proportion of a party wall is by the act made recoverable by the builder thereof, from any other perſon liable to contribute thereto.

When any building built over a publick way, or any building, having rooms the property of different perſons, and intermixed, ſhall be rebuilt, there ſhall be a party-wall, according to the directions therein contained for the higheſt claſs adjoining thereto, with a party-arch of the thickneſs of thirteen inches, in every building of the firſt and ſecond claſs, and of the thickneſs of eight inches and an half, in every third and fourth rate of building, between houſe and houſe, or between the different rooms the property of different perſons.

The laſt-mentioned clauſe relating to buildings in part over publick ways, or having rooms the property of different

ferent persons, shall not extend to any of the rooms in *Serjeant's Inn*, in *Chancery Lane*, or any of the four inns of court, or to any of the inns of chancery, or other inns for the study of the law; except the walls between the rooms in such inns, belonging to and communicating with each separate stair-case, shall be deemed party-walls within the act, and shall be subject to the regulations relating to other party-walls within the limits aforesaid.

When any owner of any house built over any publick way shall be desirous of rebuilding such house, and the owner of the adjoining building shall not be willing, by reason of some legal disability, to join in such rebuilding, then the party desirous of rebuilding shall give notice, in writing, to the owner of such adjoining house or other intermixed building that he will apply to the mayor and aldermen of the city of *London* when such part thereof is situated within the city or liberties, or to the justices of *Middlesex* or *Surrey*, or for the liberty of the *Tower*, within whose jurisdiction such house or part thereof is situated, in their sessions of the peace, to be next holden, after fourteen days from the delivery of such notice, to obtain the judgment of the courts touching the rebuilding such house, of such party-walls or arches, described in such notice, and for ascertaining the scite or party-walls, or the situation of party-arches, according to the directions in the act contained, by delivering a true copy of such notice to the owner of such adjoining house, or of the other intermixed buildings; or if such owner be under the disability of coverture, infancy, idiocy or lunacy, then to the husband of such owner under coverture, or guardians, trustees or owners under the disability of infancy, &c. by leaving the same at their usual place of abode, or by delivering a true copy to the tenant of such adjoining house or intermixed building; or, if such house be uninhabited, by fixing such copy upon the door of such adjoining or intermixed building uninhabited; and in every such case, the court of mayor and aldermen, and the court of sessions, upon application to them by the party desirous to rebuild, and upon proof of notice given, may issue their warrants to the sheriffs of *London* or of *Middlesex* or *Surrey*, or the *Tower*, requiring them to return a competent number of disinterested persons to serve on juries, within the distance to which they are summoned, not less than

twenty-

twenty-four, nor more than thirty-six; and out of such persons, a jury of twelve persons shall be drawn by the said court appointed, in such manner as juries are drawn for the trial of issues joined in his Majesty's courts of record at *Westminster*, by an act made 3 *Geo.* II. (intituled, *An act for the better regulation of juries*); which persons, so summoned, are to appear before the said courts, at such time and place as in such warrant shall be appointed, and to attend until discharged by the court: And all parties shall have their lawful challenges against any of the jury, but shall not challenge the array: And the said courts are to call before them all persons proper to be examined as witnesses, on oath, concerning the premises; and either of the said courts, if they think fit, may order the jury to view the place in question, and command such jury, witnesses and parties, to attend, until all affairs for which they are summoned shall be concluded; and the jury, upon their oaths (which oaths, and oaths to persons called to give evidence, the said courts are to administer) shall try, and determine by their verdict, whether the premises ought to be rebuilt or not; and if they ought to be rebuilt, shall determine the scite of party-walls, and also what party-arches may be necessary over or under any rooms of houses to be rebuilt, or ascertain the quantity of the soil or other parts of the premises necessary to be laid to or taken from the house of the person desirous to rebuild, permitting such person to erect a party-wall or party-arches; and shall award what compensation should be made by either of the parties to the other, in lieu of lessening the said houses by such party-wall or party-arches, or as a satisfaction for such injury as shall be done to either of the parties; and shall also ascertain what proportion of the expence of building such party-wall or party-arches shall be repaid by either of the parties to the person so rebuilding: And the said courts shall give judgment according to such verdict, as well for determining the scite of such party-wall or party-arches, as also for such sums assessed by the said jury, and likewise for such proportion of expence of building such party-wall or party-arches, awarded by the jury, to be repaid to the person who shall have rebuilt the same; and shall award to either of the parties such costs as they shall deem reasonable, which verdict, and judgment thereupon, shall be conclusive against all persons, *&c.* claiming

ing estate, right or interest in or out of the said premises, either in possession, reversion or expectancy, as also against the King's most excellent Majesty, his heirs, *&c.* and against infants and issue unborn, persons in reversion, lunaticks, ideots and femes-covert, and persons under any legal incapacity, and against all trustees and cestuique trusts and their successors, *&c.*: And all verdicts and determinations of the said courts pronounced, shall be, by the clerk of the city of *London*, or by the clerk of the peace for the county of *Middlesex* or *Surrey*, or the city and liberty of *Westminster*, or the proper officer of the liberty of the *Tower of London*, entered and filed as of record of the said courts where such proceedings shall have been had (for the entry and filing whereof, and for every order of court, and copy thereof, the said clerks, or proper officer, shall be paid 12 *d.* for every 100 words, and no more); and each of the said clerks is required to deliver to any person requiring the same an exemplification, under his hand and seal, of such verdict and determination, paying 12 *d.* for every 100 words; and every exemplification may be read as evidence in all courts of law and equity whatever: And after the expiration of fourteen days from the obtaining such judgment and payment, in manner directed, of the sums thereby awarded, or, where no money shall be awarded, after fourteen days from obtaining such judgment, the person who shall have applied for and obtaining such judgment, his heirs, *&c.* or workmen, may pull down his own house, and rebuild the same, in manner ascertained by such judgment; and may, in presence of a constable or headborough, *&c.* after the end of fourteen days after judgment obtained, enter upon the scite of ground for a party-wall or party-arches, and into the other building adjoining to the house or party-wall or party-arches, to be rebuilt, at any time between six in the morning and seven in the afternoon (*Sundays* excepted); and if the outer door of such house be shut, and the occupier refuse to open, being required, or if such house be empty, may break open such outer door, and remove to the premises, or, if there is no room sufficient for that purpose, to any other place, any goods, *&c.* obstructing the building of such party-wall, *&c.* or the pulling down any wall, or other thing necessary to be removed; and after such entry, the builders may erect such party-wall or party-arches, and their servants may

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enter into and abide therein the usual times of working, for shoring up the said house, and for taking down party-walls necessary to be removed: And if any such owner, or other person, shall hinder any workmen employed for the purposes aforesaid, or damage the said works, every such owner shall, for every such offence, forfeit 10 *l.*; to be levied and applied as the several penalties are directed to be levied and applied.

Within ten days after such party-wall or party-arches shall be built, the person who shall have rebuilt the same, or his executors, *&c.* shall leave a true account of the expence of the same with the party so awarded by the jury, to contribute to the expence thereof, or at his usual place of abode; or if such party be under coverture, to her husband; or if infants, idiots, or lunaticks, to their guardians or trustees; or in case of a body corporate being so awarded to contribute, then to the mayor or officer of such corporation; who shall pay to the person who rebuilt such party-wall or party-arches, *&c.* or his executors, *&c.* the expence of building the same so awarded by the jury, within twenty-one days after demand; or if the same be not paid, the tenant of the house chargeable therewith may pay the same, and deduct the money out of the next rent due to the owner of such house; or the same may be recovered from the party so awarded to pay, by action of debt, *&c* or information, in any court of record at *Westminster*, with double costs of suit.

All the powers by the act vested in the court of mayor and aldermen of *London*, may be exercised by the court holden in the outer chamber of the guildhall, according to the custom of the city.

Upon application to the general sessions of the peace for the county of *Surrey*, concerning any matter to be by such sessions ordered in pursuance of the act, the jury and all parties required to attend the sessions, pursuant to such application, shall be impanelled and required to attend at some general adjournment of the said sessions, within six weeks after such application; which adjournment shall be to some place in the borough of *Southwark*, appointed by the justices in the said sessions; and every further meeting of the said sessions, upon such application,

tion, shall be appointed within three weeks from the last meeting; which adjournment the justices for the county of *Surrey* are required to make and hold, from time to time.

The court of mayor and aldermen, or either of the aforesaid sessions, may impose a reasonable fine on any of the sheriffs or their deputies, making default in the premises, and on any persons summoned and returned on such jury, and shall not appear at the time and place in such summons specified, or, appearing, refuse to be sworn on such jury, or to give their verdict, or wilfully neglecting their duty therein, contrary to the true meaning of the act; and on persons having notice to attend to give evidence, who shall not attend, or attending refuse to be sworn and give evidence; and in default of payment thereof on demand, to levy such fine in manner as other fines set by the said courts are levied, so that no fine shall exceed 10*l.* upon one person for one offence; and such fine, when received, shall be applied to the use of the person so applying to the court of mayor and aldermen, and courts of sessions, and to no other use whatsoever; and if such person, having notice to attend and give evidence, shall not attend and give evidence, having had ten days previous notice in writing, under the hand of the party on whose behalf such evidence shall be wanted, his guardian, trustee, or agent, and having been tendered his reasonable charges for such attendance, he, so neglecting or refusing to give evidence, shall be liable to an action to be brought against him by the party on whose behalf such notice shall be given; in which the plaintiff shall recover the damages occasioned by such non-attendance, with costs; and no other excuse shall be allowed for non-attendance than by law allowable for non-attendance of witnesses legally summoned to give evidence on trials of issues joined in any court of record at *Westminster*: Provided, the court, where such witness shall appear, may (if they think fit) order such further sum to be paid to witnesses for their attendance on such courts, as to them shall seem reasonable, in proportion to the time such witnesses attend; and witnesses shall not be compelled to give evidence before such further sum ordered shall be paid to them.

And

And whereas it may happen that party-walls or party-arches, or party fence-walls, built or to be built within the limits aforesaid, may be defective, or so far out of repair as to render it necessary to pull down and rebuild the same, or some part or parts thereof, as well when both or either of the adjoining houses or other buildings may not require to be rebuilt, as when the said houses or buildings, or one of them, may require to be rebuilt; be it enacted, That, from and after the 24th of *June*, every owner of any house within the limits aforesaid, who shall think it necessary to repair any party-wall, *&c.* or part thereof, between any such house or the ground adjoining, and the next adjoining house, or the ground adjoining (if the owner of such adjoining house, or ground, will not, or, by reason of legal disability, cannot agree to repair the same) shall give three months notice to the owner, or if such owner be under coverture to her husband, or if under the disability of infancy, idiocy, or lunacy, to the guardians or trustees of such infant, idiot, or lunatick, or to the occupier of such adjoining house or ground, of such his intention to repair such party-wall or party fence-wall, by delivering a copy of such notice to such owner, or by leaving it at his usual place of abode; or, if such house be unoccupied, by fixing such notice on the door of such house; which notice shall be to the effect following:

APPREHENDING the party-wall, party-arch, or party fence-wall, or some part thereof (as the case shall be) *between the house or building, or ground* (as the case shall be) *thereto adjoining, situate, ——— inhabited or occupied by ——— and my house or building, or ground* (as the case shall be) *adjoining thereto, to be so far out of repair as to render it necessary to repair or pull down and rebuild the same, or some part thereof: Take notice, that I intend to have the said party-wall, party-arch, or party fence-wall* (as the case shall be) *surveyed, pursuant to an act of parliament made in the fourteenth year of the reign of King* George *the Third; and that I have appointed ——— ——— of ——— my surveyors, to meet at ——— in ———* (being at some place within the limits aforesaid) *on my behalf, on the ——— day of ——— next, at ——— of the clock in the ——— of the same day*; (being between the hours of six in the morning and six in the afternoon: *And I do hereby require and call*

call upon you to appoint two other surveyors or able workmen on your part, to meet them at the time and place aforesaid, to view the said party-wall, party-arch, or party fence-wall (as the case shall be) *and to certify the state and condition thereof, and whether the same, or any part thereof, ought to be repaired or pulled down and rebuilt. Dated this* ——— *day of* ———

In case such owner be under any disability as aforesaid, such person, or the occupier to whom such notice shall be given, shall appoint two surveyors or able workmen to meet at the time and place in such notice mentioned; and they, with the surveyors or workmen named by the party giving such notice, and whose names shall be expressed in such notice, may view such party-wall party-arch or party fence-wall, and certify the condition thereof, and whether the same ought to be repaired or rebuilt; and such surveyors may, within six days after the time appointed in such notice, view the party-wall, party-arch or party fence-wall, intended to be repaired or pulled down, and shall certify in writing, under their hands, to the court of mayor and aldermen, or to the justices of the peace in their next general or quarter sessions (as the case may be) the state of such party-wall, party-arch or party fence-wall, and whether the same ought to be repaired or pulled down and rebuilt: And in case the major part of the surveyors do not certify within one month, another surveyor is to be named by a justice; and if the walls are certified by the surveyors to be ruinous, a copy of the certificate is to be delivered to the owners in three days: And such owners, thinking themselves aggrieved, may appeal to the general quarter-sessions; whose determination shall be final: And, on default of appealing, or if, upon any appeal, there be no order made to the contrary, the party intending to repair, or pull down and rebuild, such party-wall, party-arch or party fence-wall, after the expiration of fourteen days after delivering or leaving the copy of such certificate as aforesaid, or after the determination of such appeal, may cause such party-wall, party-arch, or party fence-wall, or any parts thereof, to be repaired or pulled down, and have the like power of entry into the adjoining houses or buildings, or of breaking open the same, in the presence of a peace-officer, in case the same be unoccupied, or be refused to be opened; and

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of removing wainſcot, ſhelves, furniture and things, and of ſhoring up the adjoining houſes or buildings, as is allowed to the owners of intermixed houſes by the act; and may erect new party-walls or party-arches of ſuch materials, and of ſuch thickneſs and height, and in ſuch manner, and ſubject to ſuch reſtrictions and directions as are by the act preſcribed.

All owners of houſes of the firſt, ſecond and third claſs, ſhall have three months notice in writing before pulling down old party-walls.

All the owners of houſes and buildings having partitions of wood, may give three months notice to owners of adjoining houſes of their deſign to pull down the ſame, *&c.* and afterwards may pull down the ſaid partitions, remove furniture, *&c.* as before directed.

The perſons at whoſe expence any party-wall or party-arch ſhall be built agreeably to the directions of the act, ſhall be reimburſed by the owners who ſhall be intitled to the improved rent of the adjoining building or ground, and who ſhall, at any time make uſe of ſuch party-wall or party-arch, a part of the expence of building the ſame, in the proportion after mentioned; *viz.* If the adjoining building be of the ſame rate or claſs of building as, or ſuperior to, the building belonging to the perſon at whoſe expence the party-wall was built, then the owner of ſuch adjoining building ſhall pay one moiety of the expence of building ſo much of the party-wall or party-arch as ſuch owner ſhall make uſe of it; and if the adjoining building be of an inferior claſs, then the owner of ſuch adjoining building or ground ſhall pay a ſum equal to one moiety of the expence of building a party-wall or party-arch of the thickneſs required for the claſs whereof ſuch adjoining building ſhall be, and of the height and breadth of ſo much of the party-wall or party-arch as ſuch owner ſhall make uſe of, and until payment of the expence, the property of the party-wall or party-arch is veſted in the builder: And ſuch moiety or proportional part of the expence of building ſuch party-wall or party-arch ſhall be ſo paid to the perſon at whoſe expence the ſame ſhall be built, or in whom the property ſhall be veſted at the times after mentioned; *i. e.* in reſpect of every ſuch party-wall to a houſe or building where-

whereunto, at the time of building the ſame, no other houſe or building was adjoining, ſo ſoon as ſuch party-wall ſhall be firſt cut into or made uſe of; and in reſpect of every ſuch party-wall or party-arch as ſhall be built againſt, or adjoining to, any other houſe or building, ſo ſoon as ſuch party-wall or party-arch ſhall be completely built and finiſhed: And in reſpect of ſuch laſt mentioned party-wall or party-arch, the owner of ſuch adjoining houſe ſhall, together with ſuch proportional part of the expence of building ſuch party-wall, alſo pay a like proportional part of the expences neceſſary to the pulling down the old party-wall, or timber or wood partition, and the whole of the reaſonable expences of ſhoring up ſuch adjoining building, and of removing goods, furniture, or things, and of pulling down any wainſcot or partition, and alſo all ſuch coſts, if any, as may have been awarded by the court of mayor and aldermen, or court of ſeſſions as aforeſaid; but not any part of the expence of pulling down and clearing away ſuch old party-wall, party-arch or partition, if ſuch there was: And it is directed, that the expence of building ſuch party-wall or party-arch ſhall be eſtimated after the rate of 7*l.* 15*s.* by the rod, for the new brick-work, deducting therepout after the rate of 28*s.* by the rod for the materials (if any) of ſo much of the old wall or arch as did belong to ſuch adjoining building or ground, and alſo after the rate of 2*d.* by the cubical foot for the materials (if any) of ſo much of the old timber partition as did belong to ſuch adjoining building or ground; And within ten days after the party-wall is finiſhed, an account to be left with the owner of adjoining buildings what he is liable to pay; And in caſe the ſame be not paid within twenty-one days next after demand thereof, then the ſame ſhall and may be recovered, together with full coſts of ſuit, from ſuch owner, by action of debt, or on the caſe, in any court of record at *Weſtminſter*, wherein no eſſoin, protection, or wager of law, or more than one imparlance, ſhall be allowed: And if the plaintiff before action gives three months notice, and recovers his whole charge, he ſhall be intitled to double coſts.

All party-wall ſhall be ſuch as are required for the higheſt rate of building adjoining, and ſhall not be of leſs thickneſs; and they may be raiſed by the owner of one ſide: And if the owner of the other ſide make uſe

of it, he muſt contribute to the expence: And all party fence-walls may be raiſed by the owner of one ſide, but are not to be uſed as a party-wall unleſs of ſufficient thickneſs and height. The owner on one ſide may take down a party fence-wall, and build a party-wall: And if the owner of the other ſide uſes it other than as a party fence-wall, he muſt contribute to the expence.

The firſt builder is not to loſe any right of ſoil on account of a party-wall not being half on each ground.

If the fore-front and back-front of a building ſhall, after the twenty-fourth of *June*, be rebuilt as low as the breſſummer or one pair of ſtairs floor, within five years from each other, the party walls of every ſuch building ſhall, from thenceforth, be ſubject to the regulations contained concerning party-walls of houſes to be built after the twenty-fourth of *June*: And for further prevention of fire, the back of every chimney to be built after the twenty-fourth of *June*, in any building of the firſt claſs, not being in a party-wall, ſhall be in the cellar-ſtory at leaſt thirteen inches thick from the hearth to the height of twelve inches above the mantle; and ſhall be at leaſt eight inches and an half thick from the hearth to the height of twelve inches above the mantle in every other ſtory, except where any ſuch chimney ſhall be built againſt a wall, in which caſe the back of every ſuch chimney, from the hearth to the height of twelve inches above the mantle, may be half a brick thinner: And the back of every chimney to be built in any building of the ſecond, third, or fourth claſs, not being in a party-wall, ſhall be in every ſtory at leaſt eight inches and an half thick, from the hearth to the height of twelve inches above the mantle, except where ſuch chimney ſhall be built againſt a wall, in which caſe the back of every ſuch chimney from the hearth to the height of twelve inches above the mantle may be half a brick thinner: And there ſhall be no timber over the opening of the chimney, to be built after the time aforeſaid, for ſupporting the breaſt of ſuch chimney; but there ſhall be an arch of brick or ſtone, or an iron bar over the opening of every ſuch chimney, to ſupport the breaſt thereof: And the timber under the hearth muſt be eighteen inches lower: The hearth muſt alſo be laid on brick or ſtone, or on the ground, with ſlabs before the hearths, and brick trimmers under them: And no timber or wood

work is to be put in the brickwork of ovens, coppers, *&c.*: The distance of timber laid in the brickwork of chimnies is to be nine, and in stoves, five inches: All the wood work on the front of chimnies is to be fixed by iron nails, and no chimney is to be erected on timber.

Every external wall or inclosure of the first, second, third, or fourth class, which shall be erected after the twenty-fourth of *June*, and of every enlargement thereafter to be made to any building of the first, second, third, or fourth class, to be erected, shall be of brick, stone, artificial stone, lead, copper, tin, slate, tile, or iron, together, except the necessary piling, bridging, and planking, for the foundation, and except the necessary templets, chains, bond-timbers, and the doors, sashes, window-shutters, and door and window-frames to such buildings, and the tiers or stories of door-cases and doors to all such warehouses as are of the first, second, third, or fourth class; all which window and door frames shall be shut in reveals, and recesses at least four inches from the front of the building; and except the bressummers, story-posts, and plates, which may be made on the ground-story only; and all stall-boards for the conveniency of shops, which may be made on the ground-story only; which bressummers, story-posts, and plates, and the stories of door-cases and doors, are not hereby required to be fixed in reveals; but no story-posts and bressummers are to be fixed more than two inches in party-walls: And all corner story-posts to be of oak or stone, and twelve inches square.

Every flat, gutter, and roof of the first, second, third, fourth, or fifth class of building, which shall be built after the twenty-fourth of *June*, and every turret, dormer, lanthorn light, or other erection, placed in the flat or roof of such building, and every external part of any flat, gutter, roof, turret, dormer, and lanthorn uncovered, shall be covered with glass, copper, lead, tin, plate, tile, or artificial stone; except the doors, door-frames, windows, and window-frames, of such dormers, turrets, lanthorn-lights, or other erections.

Every coping, cornice, facia, window-dressing, portico, balcony, balustrade, external decoration or projection, made to any building of the first, second, third,

or fourth claſs; and alſo every frontiſpiece to a building of the firſt claſs, or to any addition of ſuch building, ſhall externally be of brick, ſtone, burnt clay, or artificial ſtone, ſtucco, lead, or iron; except the cornices and dreſſings to ſhop-windows; and except ſuch covered ways as may be made to any building, ſo as the covered way ſhall not extend beyond the original line of the houſes in the ſtreet or way in which the ſame is erected; and ſuch covered way ſhall be covered with ſtone, lead, copper, ſlate, tile, or tin; and neither the covered way, nor the cornice to any ſhop-window, nor the roof of any ſuch portico, ſhall be higher than the under ſide of the ſill of the window-frame of the one pair of ſtairs window of the building to which the ſame belongs: And no water ſhall be ſuffered to drip next to any publick ſtreet, ſquare, place, court, or way, from the roof of any building of the firſt, ſecond, third, or fourth claſs, except from the roofs of porticoes; but all water from ſuch roofs ſhall be conveyed by lead, copper, tin, or iron gutters or pipes, or all of them, or by wooden trunks, or brick or ſtone funnels, to the drains made, on or before the ſurface of the ground, for that purpoſe, or to ſome ciſtern or reſervoir made to receive the ſame, or to any front of ſuch building not abutting upon any publick ſtreet; and no ſuch brick or ſtone funnel ſhall be made or built, unleſs in every part thereof below the ſurface of the foot-pavement before the ſame; nor ſhall any ſuch wooden trunk, after the ſaid time, be fixed, unleſs the ſame be, in every part thereof, below the tops of the windows of the ground-ſtory.

No bow-windows are to be built extending beyond the line of the ſtreet, except projections for decorations, ſhop-windows, and ſtall-boards.

Nothing contained ſhall prejudice or defeat the powers granted to commiſſioners for paving ſtreets within the limits aforeſaid, or to the commiſſioners of the ſewers for the city of *London*.

Every external wall, or other incloſure, to any building, built, or begun to be built, before the twenty-fourth of *June*, not being of the materials by the act required for external walls or incloſures to be built, may be at all times repaired with the ſame materials as thoſe of

of which such external wall or inclosure is erected (except inclosures of roofs, flats, gutters and of dormers, turrets, lanthorn-lights or erections on the same, which shall be repaired with the materials before directed); but in case such external wall or inclosure be at any time taken down, or demolished to the bressummer or one pair of stairs floor, or the place where the bressummer is fixed, then every part of the same, not being built of the materials required for external walls or inclosures to be erected, shall be taken down, and the same shall be rebuilt of such materials, and in such manner, as by the act required for all externals walls or inclosures, to be built, according to the class of buildings to which such wall or external inclosure belongs.

No bow-window or projection shall be rebuilt, unless so originally built, or within the line of the street, *&c.*

No stack of warehouses shall be above thirty-five squares, including internal and external walls; nor shall any communication through party-walls be allowed, unless by stone door-cases and iron doors; nor shall timber be laid within eighteen inches of such doors.

No stables shall contain more than twenty-five squares of building, including internal and external walls, and so much of the party-walls as belongs thereto; and no enlargement shall be made, so as to increase beyond twenty-five squares, except such stables be divided by party-walls, built according to the directions before contained: And no communication shall be made through a party-wall, unless the door-cases and sills be of stone, and a door of wrought iron one-fourth of an inch thick in the pannels; and no timber, bond or lintel, without having cases, *&c.* shall be put into the brick wall nearer than eighteen inches to such communication.

If buildings of the first, second, third, or fourth class (except in the inns of courts or chancery, the *Royal Exchange*, companies halls, warehouses and dwelling-houses let for not more than 25 *l.* a year) be hereafter converted into two or more dwelling-houses or other buildings, in distinct tenures on the ground-floor, each tenement shall be considered as a separate building, and shall be divided by party-walls; and every party-wall shall be of the mate-

rials, height and thickness, and under the regulations directed to be observed with respect to the party-wall of the highest class of building adjoining to party-walls.

Proprietors or leaseholders may divide warehouses for the conveniency of letting the same to under-tenants; so as any stack of warehouses containing more than thirty-five squares of building on the ground-plan, shall be divided by party-walls into divisions not more than thirty-five squares each, as is before directed.

Proprietors or leaseholders of stable-yards or livery-stables, may divide them for letting the same to under-tenants; so as any building containing more than twenty-five squares on the ground-plan shall be divided by party-walls into divisions not more than twenty-five squares each, as before directed.

All buildings of the fifth and sixth rates, in distinct tenures, and not at the requisite distances, shall be deemed publick nuisances.

No funnel for conveying smoke shall be fixed next a publick street, *&c.* on the front of buildings of the first, second, third, or fourth class of building; nor on the inside of such building nearer than fourteen inches to timber, or other combustible material; nor shall any brick funnel, built on the outside of any front next to a publick street, *&c.* of buildings of the first, second, third, or fourth class, extend beyond the general line of houses in the publick street, *&c.*

Every church, dwelling-house, or wall, shall be built pursuant to the rules, and with the materials, particularly appointed; and if any persons build contrary to the said rules, and be thereof convicted by the oaths of two or more credible witnesses before the mayor of *London*, or two justices where such building shall be situated, then the said building or wall shall be deemed a common nuisance, and the builder and owner, or one of them, as the mayor or justices may require, shall enter into a recognizance in such sum as they shall appoint for abating and demolishing the same, within a convenient time; or to amend the same according to the rules before contained: And in default of such recognizance, the offender shall

shall be committed to the common gaol where the offence shall be committed, there to remain, without bail, until he have abated, demolished, or amended the same, or until such irregular building be abated or demolished by order of the mayor or justices; provided always that such conviction be within three months after such building shall be finished.

Buildings deemed nuisances shall be taken down by order of the mayor of *London*, or any two justices of the cities of *London* or *Westminster*, or counties of *Middlesex* or *Surrey*, or within the liberty of the *Tower of London*, who may sell the materials to defray the expence; the surplus to be returned to the owners, or the deficiency to be made good out of their other effects.

The court of aldermen of *London* may appoint discreet persons, skilled in the art of building, during their pleasure, to see the said regulations well observed throughout the city of *London* and the liberties thereof: And the said court are required to administer to the said surveyors an oath for the impartial execution of their office; and to appoint the districts under their respective surveys: And the justices for *Middlesex* and *Surrey*, the city of *Westminster*, and the liberty of the *Tower of London*, in their general quarter sessions are required, within their respective jurisdictions, to appoint persons qualified as above, during their pleasure, to see the said regulations well observed throughout the several parishes, *&c.* aforesaid, within the jurisdiction of the respective quarter sessions: And the justices shall administer to the said surveyors on oath for the impartial execution of their office, and shall appoint the districts under their respective surveys; which oath shall be in the form or to the effect following, *viz.*

I A. B. *being one of the surveyors or supervisors appointed in pursuance of an act of parliament, passed in the fourteenth year of the reign of King* George *the Third*, "*For* "*the further and better regulation of buildings and party-* "*walls; and for the more effectually preventing mischiefs by* "*fire within the cities of* London *and* Westminster *and* "*the liberties thereof, and other the parishes, precincts, and* "*places, within the weekly bills of mortality, the parishes of* "Saint Mary-le-bon, Paddington, Saint Pancras, *and*

" Saint Luke *at* Chelsea, *in the county of* Middlesex; *and* " *for indemnifying, under certain conditions, builders and* " *other persons, against the penalties to which they are or may* " *be liable for erecting buildings within the limits aforesaid,* " *contrary to law,*" *do swear, That, upon receiving notice of any building or wall to be built, or other builders work to be done, within the district under my inspection, not being by illness or otherwise lawfully prevented, I will diligently and faithfully survey the same, and to the utmost of my abilities endeavour to cause the rules and regulations in the said act prescribed to be strictly observed; and that without favour or affection, prejudice or malice.*

So help me *GOD.*

And such supervisor shall leave notice in writing with the clerk for the county, city or liberty, in his district, of the place of his usual residence.

Before any building or wall shall be begun, the master workman, *&c.* shall give twenty-four hours notice thereof to the surveyor within whose district the same shall be, who shall view the same, and see that all the rules in the act are truly observed; and he shall be paid by the master workman, or others causing such building or wall to be built, such money as a satisfaction for his trouble, as any two justices for the city, county or liberty, in which such building is situate, shall, by a writing under their hands appoint, not exceeding 3 *l.* 10 *s.* for every new building of the first rate; or 1 *l.* 15 *s.* for every first rate building to which any addition shall be made; and not exceeding 3 *l.* 3 *s.* for every new building of the second rate, or 1 *l.* 10 *s.* for every second rate building to which any addition shall be made; and not exceeding 2 *l.* 10 *s.* for every new building of the third rate, or 1 *l.* 5 *s.* for every third rate building to which any addition shall be made; and not exceeding 2 *l.* 2 *s.* for every new building of the fourth rate, or 1 *l.* 1 *s.* for every fourth rate building to which any addition shall be made; and not exceeding 1 *l.* 10 *s.* for every new building of the fifth rate, or 15 *s.* for every fifth rate building to which any addition shall be made; and not exceeding 1 *l.* 1 *s.* for every new building of the sixth rate, or 10 *s.* 6 *d.* for every sixth rate building to which any addition shall be made; and not exceeding 10 *s.* 6 *d.* for every

every new building of the seventh rate, or 5 *s.* for every seventh rate building to which any addition shall be made; and, in default of payment of any of the said money, or such other sums as the justices shall appoint, the same shall be levied by sale of the goods of such master workman, *&c.* with costs.

If any person begin such building or wall, or cut into any party-wall, without notice given to the surveyor, or refuse him admittance at reasonable hours, for viewing the same; every offender shall forfeit to the surveyor treble the satisfaction he would have been intitled to for his trouble in viewing the building, *&c.* and seeing the rules observed, in case notice had been given; and for every default, shall forfeit 20 *l.*; to be recovered by an action, *&c.* in any court of record at *Westminster*, by any person who shall sue for the same; and every such house, *&c.* so begun, without notice, if not built agreeably to the regulations of the act, shall be demolished or amended by order of the mayor or justices.

The surveyor within whose district any building or wall is not begun according to the rules, shall give information thereof to the mayor of *London*, or to two justices within whose jurisdiction the same shall be; and they shall proceed to hear the matter; and if any breach of the rules is found to be committed, they shall cause such irregular building or wall to be demolished or amended in manner before directed.

Workmen, servants, *&c.* causing any building or wall to be erected contrary to the directions of the act, upon conviction thereof before the mayor of *London*, or justices, upon the oath of one or more credible witnesses, or confession of the party, shall, for every offence, forfeit 50 *s.* one moiety thereof to the poor of the parish, the other to the informer; and if that forfeiture be not paid immediately on conviction, the offender shall, by warrant of the mayor or justices, be committed to the house of correction, there to remain, without bail, not more than three months, nor less than one month, unless the penalty be sooner paid.

Every master workman, *&c.* who shall build any house, *&c.* within fourteen days after such building is covered

covered in, or party-wall finiſhed, or the cutting into any party-wall made good, ſhall cauſe the ſame to be ſurveyed by the ſurveyor within whoſe diſtrict the ſame is ſituated; and if the ſurveyor refuſe, or by illneſs, or otherwiſe, be prevented, then the ſame ſhall be ſurveyed by any other ſuperviſor appointed and ſworn within the city, county, or liberty, wherein the work is ſituated; and if ſuch ſuperviſor ſhall find that the ſame is, to the beſt of his judgment and belief, built agreeably to the directions in the act, he ſhall, within fourteen days after ſurveying the ſame, make oath before the mayor of *London* or ſome juſtice within whoſe juriſdiction the building or wall is ſituated: And the affidavit ſhall be filed with the clerk of the peace for the county, *&c.* within ten days after the making thereof; and the clerk ſhall receive one ſhilling, and no more, for his trouble; and if any maſter workman, *&c.* neglect to cauſe ſuch ſurvey to be made and filed, he ſhall forfeit 10*l.*; and if ſuch affidavit be not made and filed within one month after recovery of the penalty, ſuch maſter workman, *&c.* ſhall forfeit ten pounds, and ſo *toties quoties* for every month, till the affidavit is made and filed; and the ſaid penalties ſhall be recovered and applied as the penalty by the act to be inflicted on perſons boiling larger quantities of turpentine than are allowed, in places not permitted by the act.

If any ſurveyor ſhall wilfully neglect his duty, and the ſame be made appear to the mayor, *&c.* or to the court by whom he was appointed, ſuch ſurveyor ſhall be forthwith diſcharged from his office, and for ever after be incapable of being again appointed to the ſame.

Nothing in the act ſhall extend to the royal palaces, or to any houſe or building in the poſſeſſion of either of their Majeſties, their heirs and ſucceſſors, or employed for their Majeſties uſe or ſervice.

If any preſentment ſhall be made by an inqueſt or grand jury in *London*, or by any annoyance jury of *Weſtminſter*, or by the jury ſworn at the court-leet held by the ſheriff for any place, or by other jury or inqueſt, that any houſe or building is in a ruinous condition, the court of mayor and aldermen, in reſpect of any houſe within the city and liberties of *London*, or the church-

wardens,

wardens, *&c.* for the place in which such building is situated (not being in the city of *London*) are required, on notice of such presentment made, and a copy laid before them, to cause, with all convenient speed, a sufficient hoard to be put up for the safety of all passengers, and to cause notice in writing to be given to the persons interested therein, if they can be found; and if not, to cause notice to be affixed to the door or other notorious part of such building, to repair or pull down the same, as the case may require, within fourteen days next ensuing: And if such person do not begin to repair or take down the same within the said fourteen days after notice as aforesaid, and complete such repairs, or take down the same as soon as the case will admit; then, oath being made before the mayor or a justice, *&c.* of notice given, or affixed, the mayor and aldermen, out of the cash in the chamber of *London*, and every overseer of the poor, out of the monies in his hands, are required with all convenient speed, to cause such building, or so much thereof as the court, or overseers of the poor find necessary for the safety of passengers, to be taken down and secured in manner requisite; and to sell such of the materials as the mayor and aldermen, *&c.* shall judge expedient; and out of the monies arising by the sale to pay every person by them employed for all the charges of putting up such hoards, and of taking down and securing the building and of selling the said materials, and shall account for the surplus (if any be) to the owner, upon personal demand thereof made; and if no demand be made of such overseers before others be appointed, then the overplus shall be added to the rates made for the poor of the parish, and accounted for as such.

The owners, or their executors or administrators, may, within six years, receive such overplus, ten days after demand; and the churchwardens shall pay the same out of monies raised for the poor, and shall be allowed payment thereof from the parishioners or future overseers: And if the monies arising by such sale fall short, then such deficiency shall be paid by the owners; and if they refuse to pay, the deficiency may be levied by warrant of the mayor of *London* or justices, *&c.* by sale of goods, *&c.* found: And if no owner can be met with, or shall not on demand pay the deficiency, and no sufficient

ent diſtreſs of their goods can be had; perſons who ſhall occupy the building or ground where the ſame ſtood, ſhall pay and deduct the ſame out of the rent; and if they refuſe, the ſame ſhall, by warrant as aforeſaid, be levied by ſale of the goods of any occupier of the premiſes, with coſts, and the owner ſhall allow ſuch occupier all deficiencies and charges which he ſhall pay, or which ſhall be recovered by ſale, *&c.* out of the rent for the premiſes; and all money recovered for ſuch building, within the city or liberties of *London*, ſhall be paid to the chamberlain of the city, and all money recovered, for building in any part not within the city, ſhall be paid to the churchwardens of the pariſh where the building is ſituated.

After the twenty-fourth of *June* 1774, no perſon ſhall diſtil or boil turpentine, or draw oil of turpentine and roſin by diſtilling turpentine, or boil oil and turpentine together, above ten gallons at one time, within the limits aforeſaid, in any workhouſe nearer to other buildings than fifty feet, upon pain of forfeiting for each offence 100*l.*; which forfeitures may be recovered with treble coſts in any court of record at *Weſtminſter*, one moiety to the poor of the pariſh, and the other to the informer or proſecutor.

Perſons employed in building or repairing ſhips, *&c.* near the river *Thames*, may boil and mix oil and other materials for paying of ſhips, *&c.*

The churchwardens of pariſhes and overſeers of the poor of every precinct, *&c.* not having a churchwarden, within the limits aforeſaid, ſhall fix, at the charge of the pariſh, *&c.* upon the pipes belonging to water-works, ſtop-blocks of wood, with a wood-plug, or fire-cocks, to go into each pipe, and to be placed as the churchwardens, *&c.* ſhall direct; the top of each ſtop-block or fire-plug ſhall be even with the pavement; that ſuch plugs or fire-cocks may, in caſe of fire, be opened without loſs of time in digging down to the pipes; and all churchwardens or overſeers ſhall fix a mark on a houſe neareſt to the place where ſuch ſtop-blocks, plugs or fire-cocks lie, and ſhall alſo keep a key in every houſe ſo marked, to open the ſtop-blocks, *&c.* and a pipe for the water to come out; and the ſtop-blocks, *&c.* ſhall be kept

kept in repair at the charge of the pariſh where they are placed, and the plugs by the owners of the pipes where they are fixed; and when the owners of water-works ſhall remove the pipes, they ſhall at their own coſts fix the ſame or like ſtop-blocks, plugs and fire-cocks, upon every new pipe, to be placed where the churchwardens or overſeers ſhall direct; and the key and pipe ſhall be removed to the houſe neareſt to the place to which ſuch ſtop-block, *&c.* is removed; and a like mark ſhall be fixed againſt every ſuch houſe.

Every pariſh ſhall, from time to time, keep in good order, and in ſome publick place, a large engine, and an hand-engine, to throw up water for extinguiſhing fires; and ſhall keep one leather-pipe, with a ſocket of the ſame ſize as the plug or fire-cock, and a ſuction-pipe, that the ſocket may be put into the pipe, to convey the water without loſs, and without the help of buckets, into the engine; and ſhall alſo keep in ſome publick place within each pariſh three or more ladders of one, two and three ſtory high, to aſſiſt perſons in houſes on fire to eſcape; and in default of fixing and continuing ſuch fire-cocks on the pipes, as alſo of keeping in good repair ſuch large engine, hand-engine, and leather-pipes, ſocket and ſuction-pipe, and ſuch ladders, every churchwarden, *&c.* making default in the premiſes, and being convicted before two juſtices, ſhall forfeit ten pounds, one moiety to the informer, and the other to the ſurveyor of the diſtrict; to be levied by ſale of the goods of ſuch churchwardens.

The turn-cock from whoſe water-work water ſhall firſt come into the pipe where a plug ſhall be opened, ſhall be paid a ſum not exceeding 10*s.* by the churchwardens or overſeers of the pariſh where fire may happen; and the engine keeper who firſt brings a large engine, to help to extinguiſh fire, if complete, with a ſocket, hoſe, leather-pipe, and ſuction-pipe, ſhall be paid a ſum not exceeding 30*s.*; the keeper of the ſecond large engine, which ſhall be next brought and ſo complete, ſhall be paid a ſum not exceeding 20*s.*; and the keeper of any large engine, which ſhall be the third brought, and ſo complete, ſhall be paid a ſum not exceeding 10*s.*; ſuch payment to be made by the churchwardens, *&c.* where fire ſhall happen; and in default of payment, ſuch re-

ward

ward shall be levied by distress and sale of the goods of such churchwarden and overseer, in manner as the penalty of 10*l.* is before directed to be recovered.

No reward shall be paid without the approbation of the alderman of the ward wherein such parish is situate, or of two of the common councilmen of the ward, if fire happens within the city or liberties of *London*, or without the approbation of one or more justices for *Middlesex* or *Surrey*, residing within the parish, *&c.* where such fire happens; and if no justices reside in such parish, then of justices residing near the place, if fire happens out of the city of *London* and liberties thereof.

Where rewards are payable for fire occasioned by the taking fire of any chimney only, the occupiers of any room to which such chimney belongs, or holder of any house of which such room is part, or, if such chimney belong not to any lodger, then the tenant of the house wherein fire first begins shall repay to the churchwarden or overseer all such rewards or payments, by them made, or such part thereof as the mayor or other justice upon the complaint of the churchwarden or overseer, and hearing the parties complained against, shall award and direct: And that the mayor or other justice may be the better enabled to award and direct what may be just and reasonable, the said mayor and such justice may summon the parties complained against, and all persons fit to give evidence touching the premises, and may examine them upon oath; and if the party complained against do not appear, the mayor and such justice shall examine the matter of the complaint and the evidence produced, and make such award as shall be just, and as if the party not appearing had been present, and heard in his defence; and if any sums so awarded to be repaid to such churchwarden, *&c.* be not repaid within fourteen days after demand, every such churchwarden, *&c.* by warrant from the mayor or other justice, may levy such recompence so to be paid by distress and sale of the goods of the party making default of payment or of any goods found in the apartment to which the chimney where such fire began belongs, or in part of the house whereof such room is part.

As

As several parishes in the city of *London* were, after the great fire in one thousand six hundred and sixty-six, united together, it is enacted, That any two or more of the parishes so united shall, for the purposes of the act, be deemed one parish only.

Large parishes may have more than one large engine, to be provided at the charge of the parish, and under the regulations and encouragements of the act.

The churchwardens and overseers of the poor may, with the consent of the major part of the inhabitants assembled in the vestry of each parish, pay the expences of the fire engines, and all necessary implements, rewards, *&c.* out of the poor's rates.

The watermen retained by the insurance office within the limits aforesaid, not exceeding thirty for each office, shall not be liable to be compelled to serve as mariners or soldiers, their names and places of abode being to be registered in the admiralty office.

The governors of the several offices for insuring houses, *&c.* against fire, are authorised upon request of any persons interested in houses which may be burnt down, or damaged by fire, or upon any grounds of suspicion that the owners, occupiers, or other persons who have insured such houses, *&c.* have been guilty of fraud, or of wilfully setting their houses on fire, to cause the insurance money to be expended towards rebuilding houses so burnt down or damaged; unless the parties shall, within sixty days after their claim is adjusted, give security to the insurance office, that the insurance money shall be laid out as aforesaid; or unless the said insurance money shall be, in that time, disposed of amongst all the contending parties to the approbation of the governors of such insurance office.

If servants, through negligence, shall fire any building in *Britain*, such servants, being convicted by the oath of witnesses before two justices, shall forfeit 100*l.* to the churchwardens where such fire shall happen; to be distributed amongst the sufferers, in such proportions as to the churchwardens shall seem just: And in case of refusal to pay,

pay, ſervants ſhall, by warrant of two juſtices, be committed to the common gaol, or houſe of correction, for eighteen months, there to be kept to hard labour.

Upon notice of fire breaking out within the limits aforeſaid, all conſtables and beadles ſhall immediately repair to the place, with the badges of their authority; and ſhall aſſiſt in extinguiſhing the fire, cauſing people to work at the engines, and in preventing goods being ſtolen; and ſhall ſeize all ill-diſpoſed perſons they ſhall find ſtealing from the inhabitants; alſo they ſhall give their utmoſt aſſiſtance to help the inhabitants to remove their goods.

No action ſhall be had againſt any perſon in whoſe houſe, or on whoſe eſtate any fire ſhall accidentally begin, nor any recompence be made by ſuch perſon for damage ſuffered thereby: And if any action be brought, the defendant may plead the general iſſue, and give the act, and the ſpecial matter in evidence, at any trial; and if the plaintiff become nonſuited, or diſcontinue his ſuit, or a verdict paſs againſt him, the defendant ſhall recover treble coſts; provided that no contract between landlord and tenant ſhall be hereby made void.

Diſtreſs made for money recovered by the act, ſhall not be unlawful, nor the parties making the ſame be deemed treſpaſſers, on account of any defect of form relating thereto; nor ſhall the parties be deemed treſpaſſers *ab initio*, on account of any irregularity afterwards done by the party making ſuch diſtreſs; but the perſons aggrieved may recover full ſatisfaction for the ſpecial damage only, by action on the caſe, and not by any other.

No plaintiff ſhall recover in an action for ſuch irregularity or other proceedings, if tender of amends be made by the party who committed the irregularity or wrongful proceeding before ſuch action be brought; and if no tender be made, the defendant, by leave of the court where ſuch action ſhall depend, at any time before iſſue joined, may pay into the court ſuch ſum as he ſhall ſee fit, whereupon ſuch judgment ſhall be given, as in other actions when the defendant is allowed to pay money into court.

As

As by the recited act 12 *Geo.* 3. penalties are inflicted upon persons who should offend against the said act; and as, since the date thereof, buildings have increased within the limits aforesaid, many of which are not built according to the directions of the act, whereby several persons may be under prosecution for the same; and as the owners of such buildings, or workmen employed therein, are willing to make the same as conformable to the directions contained in the act as the nature of each case will admit; it is enacted, That on every action, *&c.* in any court of record at *Westminster*, against any such owner or workman, or other persons, for recovery of any penalty incurred, the court where the same may be depending may, on application of the defendants, make a rule for the plaintiff in such action, to deliver to the defendant an account, under the hands of the plaintiff, of the particular defect or irregularity in such building, and to make an order for staying the proceedings until such account shall be delivered; and, after the same is delivered, it shall be lawful for such defendant to defend such action, as if this act had not been made, or to enter into a rule of the court for reforming such irregularities and defects, (if any), and for rendering such building as secure against fire, and as conformable to the directions of the act, in such manner, and within such time, as two of the surveyors shall appoint: And such rule being entered into, and payment made to the plaintiff of costs, to be taxed by the proper officer, the court shall order further proceedings to be stayed till the time appointed by the surveyors shall be expired; and after the expiration thereof, such court is required, on application or motion on the behalf of such owner, workman, or other person, and on proof by affidavit to the satisfaction of such court, that the irregularities complained of are reformed, and the building of such house rendered as secure against fire, and as conformable to the directions of the act, in such manner, and within such time, as such supervisors shall have appointed by such writing as aforesaid, to order proceedings to be peremptorily stayed in such action: And the defendant shall, from thenceforth, be indemnified against all penalties incurred by reason of not having originally built such party-walls pursuant to the directions of the act or by reason of any other defect, whereby such

houses are otherwise built than pursuant to such directions.

If no such application shall be made to court before the end of the next term after the expiration of such time as shall be appointed by the surveyors for the purposes aforesaid; or if, upon such application, proof shall not be made by the defendants to the satisfaction of the court, then the plaintiffs shall be at liberty to proceed in such suit as if the act had not been made.

The court where such rule shall be entered into pursuant to the act, shall proceed against the parties who have entered into such rule, and have refused to perform the same, as for a contempt of court; and shall, on motion, issue the like process of attachment, or otherwise, as is usually issued against suiters for contempt.

The act is not to extend to indemnify persons against whom judgment shall have been given before passing thereof.

All irregular buildings erected since 12 *Geo.* 3. are to be made secure against fire; and all irregular projections are to be altered, though no prosecutions have been commenced; the situation of such house being certified to the court of mayor and aldermen, by three sworn surveyors; and the said court is to make an order for reforming such irregular projections or buildings, and securing the same against fire; which order is to be filed in court by the clerk, and the said irregularity is to be reformed within nine months, on pain of 50*l.* penalty for every nine months such defect shall continue.

Informations commenced by virtue of the act 12 *Geo.* 3. are by the authority of this act discharged, acquitted, and indemnified from and against all such informations; and the said mayor and justices shall discharge them of and from the same accordingly.

No order of the mayor or justice or other proceeding is to be removed by *certiorari*.

Appeal may be made to the justices at the quarter sessions, who may examine the same, and award costs; and their order shall be binding and conclusive.

The person intending to appeal shall, immediately after conviction, commitment, distress, or judgment, or within two days afterwards, enter into a recognizance to the party appealed against, before a justice of the peace, with sufficient securities, conditioned to try such appeal, and to abide the order of, and pay to the party appealed against, such costs (if any) as shall be awarded against him, by the sessions respectively.

Parishioners may be allowed to be witnesses.

No action shall be brought against persons for penalties inflicted by the act, unless commenced within six calendar months next after such forfeiture shall be incurred.

No action shall be commenced against persons for any thing done in pursuance of this act, until twenty-one days after notice, in writing, of an intention to bring such suit, has been given to the person against whom it shall be brought, nor after the expiration of three calendar months next after the fact committed; and every action, the cause whereof shall arise within *London*, or the liberties, shall be tried in *London*, and not elsewhere; and such action, the cause whereof shall arise in any part of the limits aforesaid out of the said city and liberties, shall be laid and tried in *Middlesex*, and not elsewhere; and the defendant in such action may plead the general issue, and give the act and the special matter in evidence at any trial to be had thereupon, and that the matter for which such action is brought was done in pursuance and by the authority of the act: And if the matter appear to have been done, or if it appear that such action was brought before the expiration of twenty-one days after such notice given as aforesaid, or that sufficient satisfaction was made before such action was brought; or if any action be not commenced within the time limited, or be laid in any other county or place, then the jury shall find for the defendant therein; and if a verdict so be found, or if the plaintiff in any action become nonsuited, or suffer a discontinuance of his suit; or if, in such action, judgment be given for the defendant on demurrer, by default, or otherwise; then the defendant shall have judgment to recover treble costs of

suit, and such remedy for recovering the same as a defendant may have in costs in other cases.

So far as respects party-walls, regulating of buildings, preventing mischiefs by fire, &c. acts 19 *Car.* II. c. 3. 6 *Annæ*, c. 31. 7 *Annæ*, c. 17. 11 *Geo.* I. c. 28. 33 *Geo.* II. c. 30. 4 *Geo.* III. c. 14. 6 *Geo.* III. c. 27. and another act of the same session,—as relate to the regulating of buildings and party-walls, and preventing mischiefs that may happen by fire, shall be and continue repealed.

The act shall be deemed and taken to be a publick act; and shall be judicially taken notice of as such by all judges, justices, and other persons, without specially pleading the same.

FINIS.